

## **SECOND DISCUSSION PAPER**

### **Proposed Regulatory Changes Regarding Application of Tax to Graphic Arts and Related Enterprises**

#### **Regulation 1540, Advertising Agencies, Commercial Artists and Designers; Regulation 1541, Printing and Related Arts; Regulation 1543, Publishers**

##### **I. Issue**

Should Regulations 1540, 1541, and 1543 be amended to clarify the application of tax to graphic arts and related enterprises?

##### **II. Staff Recommendation**

Staff recommends the following:

- Conforming Regulations 1540, 1541, and 1543 in accordance with the April 2000 revisions to Regulation 1540, in regard to lump-sum billings for artwork and nontaxable services.
- Providing clarification in Regulations 1540 and 1541 that the application of tax is based on the services provided and not on the person's classification as a business, e.g., as an advertising agency, commercial artist, designer or printer.
- Amending Regulation 1540 in accordance with the California Supreme Court ruling in *Preston v. State Board of Equalization*, on the taxability of artwork when sold along with copyright interests.
- Amending Regulation 1540 to clarify that the term "commercial artists" includes commercial photographers.
- Incorporating into Regulation 1540 (f) the provisions of SB 330, which exempts the transfer of original drawings at social gatherings for entertainment purposes.
- Amending Regulation 1541 to replace the confusing terminology of "ultimately subject to tax" with a clear explanation of the application of tax.
- Reformatting Regulations 1540, 1541, and 1543 to provide definitions of terms at the beginning of each regulation.

Staff's recommendations have no operative date. Staff's recommendations are shown in Exhibits 1, 2 and 3.

##### **III. Other Alternative(s) Considered**

###### **A. Alternative 1**

As proposed by Mr. Daniel Abraham representing the Graphic Artists Guild (GAG), amend:

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- Regulations 1540, 1541, and 1543 to incorporate the California Supreme Court ruling in *Preston* on the taxability of artwork when sold along with copyright interests.
- Regulation 1540 to create a new subdivision (d)(6) providing that finished artwork temporarily transferred in a technology transfer agreement has a de minimis fair rental value and the value of the artwork is incidental to the transfer of the intangible rights.
- Regulation 1541 to include clip art within the definition of a special printing aid and to amend the definition of clip art.
- Regulation 1541(e)(3) to delete the reference to camera-ready typography not containing artwork other than clip art.
- Regulation 1543(a) to clarify the definition of terms and to add a definition for illustrators and photographers.

GAG's recommendations regarding Regulations 1540, 1541 and 1543 are shown in Exhibits 1, 2 and 3. GAG's recommendations have no operative date.

#### **B. Alternative 2**

As proposed by Mr. Don Jung, representing the American Association of Advertising Agencies (AAAA):

- Amend Regulation 1540(d)(1) to define the phrase "contract of sale" as the purchase order signed by the client.
- Amend Regulation 1540(d)(1) to treat a one-time transfer of all electronic disks and other tangible personal property upon the termination of the relationship with the advertising agency, commercial artist or designer, as a nontaxable service.
- Amend Regulation 1540(d)(2) to clarify that the transfer of electronic or digital pre-press instruction by remote telecommunications is not a printing aid.
- Amend Regulation 1540(d)(2) to clarify that a lump-sum allocation of printing aids would be subject to tax under subdivision (b)(1), if the printing aid is equal to or exceeds the purchase price of the artwork.
- Amend regulation 1540(d)(4) to clarify that charges for a license, copyright, or subpart of a copyright to exploit a photograph or finished art is not taxable as tangible personal property because it is for the intangible copyright value used for a restricted or a limited use.

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At this time, no language or recommendations have been provided for Regulations 1541 and 1543. AAAA's recommendation has no operative date.

#### **C. Alternative 3**

As proposed by Mr. Patrick Leone, CPA, do not replace the language "ultimately subject to sales tax" in Regulation 1541(c)(1) as recommended by staff. At this time, no language or recommendations have been provided for Regulations 1540 and 1543. Mr. Patrick Leone's recommendation has no operative date.

#### **IV. Background**

The application of tax to graphic arts and related enterprises is addressed in Regulation 1540, *Advertising Agencies, Commercial Artists and Designers*; Regulation 1541, *Printing and Related Arts*; and Regulation 1543, *Publishers*. Clarification of the application of tax is needed for the following reasons:

- Amendments to Regulations 1540 and 1541, effective 1999 and 2000, have resulted in inconsistencies and confusion in the application of tax to charges for graphic art services and special printing aids.
- The April 2, 2001 California Supreme Court decision, *Preston v. State Board of Equalization* invalidated a portion of Regulation 1540.
- Regulation 1543 has not been updated to correspond with the 1999 and 2000 amendments to Regulations 1540 and 1541.
- Senate Bill (SB) 330, Chapter 799, Statutes of 1999, created Revenue and Taxation Code (RTC) section 6010.30 that provides an exclusion from "sale" or "purchase" for certain transfers of original drawings, sketches, illustrations, or paintings by artists or designers at a social gathering. These provisions are not currently in Regulation 1540.

The following sections summarize the current provisions and history of Regulations 1540, 1541, and 1543.

##### Regulation 1540

Regulation 1540, *Advertising Agencies, Commercial Artists and Designers*, is the successor to Board of Equalization Ruling No. 1 (effective 1933), and Ruling No. 2 (an amendment of Ruling No. 1, effective 1950). Ruling No. 2 was renumbered as Regulation 1540 in 1971. The

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current form of the regulation results from extensive amendments in 1999. The regulation interprets, implements, and makes specific RTC sections 6006 through 6015 involving transactions by advertising agencies, commercial artists and designers.

The basic framework of Regulation 1540 was established by Ruling No. 2. In this ruling, the Board recognized that the activities of advertising agencies could include both taxable and nontaxable transactions and that advertising agencies sometimes acted as agents of their clients when making purchases from third-party vendors. If an advertising agency qualified as an agent, a purchase on behalf of its client was regarded as a retail sale by the vendor to the client and tax applied to the vendor's gross receipts. If the advertising agency did not qualify as an agent, the advertising agency was purchasing the property for resale and tax applied to the advertising agency's retail sale measured by the total amount the advertising agency received from that sale of tangible personal property to its client. The ruling also provided general guidelines for determining agent status. These included the nature of the contract, the conduct of the parties involved, and the facts and circumstances of the transaction. Ruling No. 2 also provided that charges for art produced for the purpose of visualizing an idea were not taxable. However, it specifically stated that tax applied to charges for artwork sold for reproduction or display.

A 1961 amendment to Ruling No. 2 added detail on the application of tax to the different charges or services of an advertising agency:

- Services unconnected with a sale of tangible personal property were not taxable. Examples included the writing of original manuscripts, news releases, or advertising copy, and the placement or delivery of advertising. Charges for services in support of nontaxable activities were not taxable. Support included supervision, consultation, research, and travel expenses.
- Commissions or fees charged in connection with nontaxable services were not taxable.
- Tax applied to the entire charge for tangible personal property sold to clients.

The amendment also introduced the concept of "preliminary art" which it defined as "roughs, visualizations, comprehensives or layouts prepared for acceptance by clients before a contract is entered into or approval is given for finished art." The amendment provided that separately stated charges for preliminary art were not taxable unless the art was incorporated into finished art. Separately stated charges had to be clearly identified on the billing as being for preliminary art. Proof of ordering the final art was to be evidenced by purchase orders of the buyer, or work orders or other records of the seller. "Finished art" was defined as the final art used for reproduction by photomechanical or other processes.

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Ruling No. 2 was renumbered as Regulation 1540 in 1971, and the regulation was substantively amended concerning: 1) “agent” status and its effect on the application of tax, and 2) the application of tax to services rendered by advertising agencies in connection with sales of tangible personal property. The amendments in 1974 defined an agent as one who represents a principal in dealings with third persons. An advertising agency may either act as an agent for its clients or it may act on its own behalf. If it qualifies as an agent, an advertising agency is neither a purchaser nor seller of property purchased on behalf of its clients and the advertising agency’s charge to the client for the property is not taxable. If it is acting on its own behalf, the advertising agency is a consumer of items purchased and a retailer of the tangible personal property it sells. The only exception is property purchased by the agency’s client for resale.

To establish its agent status, an advertising agency must: 1) clearly disclose to the supplier the name of its client, 2) obtain and retain written evidence of agent status prior to the acquisition, and 3) bill the client the same amount that was paid to the supplier. In addition, the advertising agency must make no use of the property for its own account and should separately invoice its client for the reimbursement. Advertising agencies making purchases on behalf of clients should not issue resale certificates for purchases.

Even if the advertising agency qualifies as an agent, it is still considered a retailer of items produced or fabricated by its employees in-house. Consequently, it is not an agent in regard to materials acquired for incorporation into property prepared by its employees.

The 1974 amendments also note that client billings may include the selling price of tangible personal property, as well as compensation for expenses and services related to the production of the property. Tax applies to the total amount of a retail sale whether the property is acquired from an outside source or is prepared by an employee. The revision also lists specific types of charges that are taxable. These charges include labor or service costs for the production of the property, supervision, consultation, research, postage, model or talent fees, typography or other services involved in the production, and telephone or travel expenses.

If an advertising agency includes the selling price of the property in a charge that includes other nontaxable charges such as a fee or commission, tax applies to the “fair retail selling price” of the tangible personal property sold, defined as: 1) the net labor costs of the employees plus an allowance for overhead and profit of not less than 100 percent of the labor cost, plus 2) cost of the purchased items incorporated into the property. Firm quotes based on these criteria are considered a fair retail selling price.

The 1974 amendments to Regulation 1540 also note that tax does not apply to any charge an advertising agency incurs in connection with nontaxable activities on behalf of its clients. This

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includes fees and commissions for nontaxable activities. However, a general fee added to a billing with both taxable and nontaxable activities is taxable in accordance with the ratio of the taxable and nontaxable charges.

The 1974 amendments did not change the rules governing preliminary art or purchases of supply items that were established in previous versions of the regulation.

Amendments subsequent to 1974 include:

- An amendment in 1976 provided that advertising agencies, artists, or designers are consumers of art or photographs used to prepare tangible personal property for resale. If art or photographs are physically incorporated into the work, they may be purchased for resale. Mere use of an image is not physical incorporation.
- An amendment in 1983 clarified the consequences of an agent issuing a resale certificate to a supplier. This amendment states that an agent may not issue a resale certificate to a supplier. If a certificate is issued, it is presumed that the agency is buying on its own behalf for resale and not as an agent.
- An amendment in 1994 detailed the documentation required of commercial artists, designers, or advertising agencies who produce preliminary artwork on data processing equipment. As provided, they must produce a hard copy of claimed preliminary art and retain the copy as part of their books and records.

Effective April 2000, the following amendments to Regulation 1540 were made:

- Excluded from tax any transfers of tangible personal property resulting from preliminary art services unless title or possession is passed to the client by contract.
- Provided a rebuttable presumption that an advertising agency is acting as an agent in acquiring tangible personal property for its customer except for items produced in-house.
- Established a presumption that when a lump-sum charge includes the charge for artwork and specified conceptual and design services, 75% of the lump-sum charge for the transfer of artwork is for nontaxable conceptual and design services provided by advertising agencies and graphic artists.
- Established the method to calculate the taxable selling price of tangible personal property when an advertising agency, graphic artist, or designer makes a lump-sum charge for the retail sale of tangible personal property and nontaxable services.

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- Defined taxable and nontaxable services.
- Treated the sale of additional copyrights or royalties as nontaxable when they are made more than one year after the original transfer of artwork or physical media.

It should be noted that since its inception as Ruling No. 2, Regulation 1540 has had two constants. First, advertising agencies could act as either agents of their clients or as retailers of tangible personal property purchased from third party vendors. When acting as a retailer, tax was due on the total amount received from the client. Second, charges for concept development which usually includes the production of art for the purpose of visualization and approval of that concept (preliminary art) were nontaxable, but charges for art sold for reproduction or display were subject to tax. Subsequent amendments to the regulation did not change these constants. Rather, the amendments served to define and refine the application of tax to the activities of advertising agencies and commercial artists.

#### Regulation 1541

Regulation 1541, *Printing and Related Arts*, previously Ruling 24 effective in 1939, interprets and explains the application of tax to sales of tangible personal property to and by printers. The regulation interprets, implements, and makes specific RTC sections 6006 through 6012. In 1971, Ruling 24 was renumbered to Regulation 1541.

The regulation was substantially amended in 1972. One of the amendments provided a definition of “special printing aids.” The definition for special printing aids included aids that are of unique utility to a particular customer and that are reusable. The definition also specifically excluded printing plates that were designed for one time use. A standard of proof was incorporated that would allow special printing aids to be deemed sold prior to use if the special printing aids were separately listed and priced from the printed matter on the sales invoice. Without such a listing, an explicit agreement in writing of title transfer between the buyer and seller would have to be present. Clarification on illustrations was also provided. The transfers of photographs, drawings, paintings, handlettering, and other artwork were considered subject to tax. Transfers of photographic reproductions were also considered taxable.

In 1999, amendments to Regulation 1541 provided the following:

- With respect to sales of printed material that is “ultimately subject to sales tax,” a presumption that the selling price of the printed material includes the selling price of special printing aids.

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- That charges for alterations of filmwork for \$100 or less constitutes nontaxable repair, while charges over \$100 are taxable fabrication.
- That otherwise qualifying typography remains typography when “clip art” is combined with text on the same page.

#### Regulation 1543

Regulation 1543, *Publishers*, was developed in cooperation with the publishing industry. In 1988, Bookbuilders West, a publishing industry association, petitioned the Board of Equalization for the adoption of a Sales and Use Tax Regulation for the publishing industry. Regulation 1543 became effective March 17, 1991. It interprets and explains the Sales and Use Tax Law as it applies to the sales and purchases of tangible personal property by publishers of printed literature. The regulation defines terms that are peculiar to the publishing industry and provides guidance in the application of tax to the activities of the publishing industry.

In December 1991, the regulation was amended to reflect the repeal of the exemption for the sale of newspapers and periodicals and for the sale of a photograph when the possession, but not the title, was transferred for the purpose of being reproduced one time only in a newspaper. This amendment was a result of the repeal of the newspaper and periodical exemption under RTC section 6362 effective July 15, 1991.

In 1996, the regulation was amended to include columns, cartoons, or cartoon strip drawings in the definition of “manuscripts,” and to include transfers of such items to syndicators in the exemption provided for transfers of original manuscripts (or copies thereof) between authors and publishers.

#### Application of Tax to Charges for Special Printing Aids

The provision including the phrase “ultimately subject to sales tax” in Regulation 1541(c)(1) has created confusion. This is evident by taxpayers’ written requests for clarification on the terminology “ultimately subject to sales tax” because it referred to transactions involving exempt sales as well as taxable sales.

Provisions in Regulation 1543 concern the application of tax to sales of artwork to publishers. These provisions use language taken from Regulation 1540 prior to the amendments that became effective on April 23, 2000. Consequently, Regulation 1543 does not address the situation where there is a taxable sale of artwork along with nontaxable conceptual and design services for a lump-sum price, thereby creating a potential inconsistency between Regulations 1540 and 1543.



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##### Preston Decision

On April 2, 2001, the California Supreme Court issued its opinion in the case of *Preston v. State Board of Equalization (Preston)*. *Preston* found that tax does not apply to a copyright interest transferred along with copyrighted artwork pursuant to a written agreement contemplating the copying and selling of the copyrighted material because this type of transaction constitutes a technology transfer agreement (TTA) pursuant to RTC sections 6011(c)(10) and 6012(c)(10). In reaching this conclusion, *Preston* further found that the legislation enacting the TTA provisions applied retroactively and that at least subdivision (d)(4) of Regulation 1540 is invalid.

Since the *Preston* decision specifically invalidated a subdivision of Regulation 1540 and provides a method of valuing artwork that differs from the current provisions of 1540, it is proposed that Regulation 1540 be amended in accordance with the *Preston* decision.

As a separate but related matter, staff is currently working on proposed Regulation 1507, *Technology Transfer Agreements*, which is scheduled for discussion at the December 19, 2001 Business Taxes Committee meeting.

##### Senate Bill 330

Senate Bill (SB) 330 (Chapter 799, Statutes 1999) created RTC section 6010.30, which provides an exclusion from the terms “sale” and “purchase” for the transfer of original drawings, sketches, illustrations or paintings by an artist or designer at a social gathering for entertainment purposes if all of the following requirements are met:

- Substantially all (80 percent or more) of the drawings, sketches, illustrations, or paintings are delivered by the artist or designer to a person or persons other than the purchaser.
- Substantially all (80 percent or more) of the drawings, sketches, illustrations, or paintings are received by a person or persons, other than the purchaser, at no cost to the person or persons who become the owner of the drawings or sketches.
- The charge for the drawings, sketches, illustrations, or paintings is based on a preset fee.
- The fee charged for the drawings, sketches, illustrations, or paintings is contingent upon a minimum number of three drawings, sketches, illustrations or paintings to be produced by the artist or designer at the social gathering.

This legislation was enacted to codify a specific ruling in a case heard by the Board. That case involved an artist who was hired for an hourly fee by a host or hostess to draw caricatures of

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guests at parties. The artist received the fee regardless of the number of guests who requested that a caricature be drawn. The Board concluded that the entertainment value the artist provided was the true object of the contract and that any artwork transferred was merely incidental. It is proposed that the provisions of RTC section 6010.30 be incorporated into Regulation 1540.

#### Submissions From Interested Parties

Staff has received comments from the Printing Industries of California (PIC), the Graphic Artists Guild (GAG), the American Association of Advertising Agencies (AAAA), Sedlik Photography, the American Society of Media Photographers (ASMP) and the California chapters of the Advertising Photographers of America (APA). See below for further discussion of submissions received.

An interested parties meeting was held on August 7, 2001, in both Sacramento and Torrance via teleconference to discuss the concerns of the graphic arts industries. This topic is scheduled for discussion at the February 5, 2002 Business Taxes Committee meeting.

## **V. Discussion**

### **Staff's Recommendation**

Staff recommends the following, as shown in Exhibits 1, 2 and 3:

- Conforming Regulations 1540, 1541, and 1543 in accordance with the April 2000 revisions to Regulation 1540, in regard to lump-sum billings for artwork and nontaxable services. The staff proposal allows the rebuttable presumption that printers and publishers are entitled to claim 75% of a lump-sum charge for the transfer of artwork as nontaxable charges if conceptual and design services are provided with the artwork.
- Providing clarification in Regulations 1540 and 1541 that the application of tax is based on the services provided and not on the person's classification as a business, e.g., as an advertising agency, commercial artist, designer or printer. Staff is recommending the addition of language in Regulation 1540(d) and 1541(b) to clarify that the application of tax is not determined by the classification of the person's business as an advertising agency, commercial artist, designer, printer or otherwise, but rather determined based on what service is actually being provided to the client. For example, if the person is providing advertising agency services, Regulation 1540 would govern the taxability of the transaction. If the person is providing services as a printer, Regulation 1541 would govern the taxability of the

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transaction. In essence, the application of tax would be based on each transaction according to the services provided.

- Amending Regulation 1540 in accordance with the California Supreme Court ruling in *Preston* on the taxability of artwork when sold along with copyright interests. Staff proposes to insert language and references on the application of tax to technology transfer agreements in Regulations 1540, 1541, and 1543. In addition, staff proposes clarifying language to provide when transfers of copyright interests are includable in the taxable sales price and when transfers of copyright interests along with copyrighted artwork, pursuant to a written agreement contemplating the copying and selling of the copyrighted material, are not taxable.
- Amending Regulation 1540 to clarify that the term “commercial artists” includes commercial photographers. Staff proposes to incorporate language in subdivision (a)(2) to include a commercial photographer within the same classification as a commercial artist.
- Incorporating into Regulation 1540 the provisions of SB 330, which exempts the transfer of original drawings at social gatherings for entertainment purposes. Staff proposes incorporating this issue as new subdivision (f).
- Amending Regulation 1541 to replace the confusing terminology of “ultimately subject to tax.” Staff proposes to reformat the discussion of special printing aids into subdivision (c)(1) through (c)(3) as it relates to a printer’s and a print broker’s purchase of special printing aids, the sale of these printing aids, and the application of tax to each transaction.
- Reformatting Regulations 1540, 1541, and 1543 to provide definitions of terms at the beginning of each regulation. Staff proposes to define key terms for each regulation to provide an easier understanding of the application of tax to graphic arts and related enterprises.

On June 21, 2001, Mr. Gerald M. Bonetto representing PIC, provided comments addressing the inconsistency between Regulations 1540 and 1541. PIC noted that subdivision 1540(b)(1) provided the rebuttable presumption that 75% of a lump-sum charge for the sale of artwork is for non-taxable services. PIC believes that under Regulation 1541 a transaction by a printer who produces nontaxable services and finished art is subject to tax based on the entire charge, since the finished art or design is considered a special printing aid. PIC suggests that Regulations 1541 and 1543 be amended to include the designer and commercial artist provisions in Regulation 1540.

Staff believes that PIC’s concerns are already addressed in the existing regulations; in addition, staff’s proposed regulatory changes include clarifying language that explains how tax applies to

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such transactions. When the charge for a special printing aid is separately taxable (e.g., when the printer is the consumer, or when the printer is making a retail sale of the special printing aid along with a nontaxable sale of printed matter), tax is due on the printer's cost of the special printing aid or its components. The cost of the components of final art for which a lump sum charge is made that includes nontaxable conceptual and design services is 25% of that lump sum charge. Any doubt on this subject is resolved by proposed subdivision (c)(2)(B)2., which states that if the printer pays tax or tax reimbursement when purchasing the components, no further tax is due. When the printer pays such tax or tax reimbursement for its purchase of final art with conceptual and design services for a lump sum, the artist will collect that tax or tax reimbursement based on 25% of the lump sum charge, and no further tax will be due with respect to that final art.

In a written submission provided at the interested parties meeting on August 7, 2001, Mr. Jeff Sedlik of Sedlik Photography expressed his concern regarding the inequity in sales tax liability for commercial advertising photographers and commercial illustrators who both provide substantial creative skills in their work. Mr. Sedlik supports the incorporation of commercial photographers into Regulation 1540. Staff addresses Mr. Sedlik's concerns in staff's proposed amendments to 1540(a)(2).

Several interested parties have expressed agreement with staff's intentions, except as explained in the following discussion of alternative proposals.

#### **Graphic Artists Guild's Proposal**

##### Taxability of Artwork in Technology Transfer Agreements

On July 2, 2001, Mr. Daniel Abraham representing GAG, provided proposed language for Regulations 1528, 1540, 1541, and 1543 to bring these regulations into compliance with the ruling in the *Preston* case regarding the taxability of artwork when sold along with copyright interests in technology transfer agreements. Staff will retain GAG's proposal for Regulation 1528 for consideration by the Business Taxes Committee at a later date if GAG's issues are not addressed in the current proposed amendments to Regulation 1540.

Ms. Christine Valada representing the ASMP and the California chapters of APA, supports the language proposed by GAG to amend Regulations 1540, 1541, and 1543 relating to graphic arts so that these regulations will apply to illustrators, photographers, and graphic artists in the same manner. The ASMP and California chapters of APA would like to clarify that the finished work provided to a publisher is as likely to be an original color transparency or a digital form of an image as it is to be a "photographic print" as used in the examples provided by GAG. No alternative language was provided.

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##### Temporary Transfers of Artwork

In addition to incorporating the application of tax to technology transfer agreements, GAG proposes to amend Regulation 1540 to create a new subdivision (d)(6) to consider that when a transfer of the finished artwork in a technology transfer agreement is a temporary transfer of possession, the fair rental value of the temporary transfer should be deemed to be de minimis and incidental to the transfer of the intangible rights.

Staff does not agree with GAG's proposal to treat the temporary transfer of finished artwork as de minimis and incidental to the transfer of intangible rights. RTC sections 6011(c)(10) and 6012(c)(10) explicitly set forth the measure of tax on the sale of tangible personal property in connection with a technology transfer agreement, and do not incorporate a de minimis concept. Thus, in accordance with these provisions, staff believes that there is no statutory authority to allow a de minimis concept in the valuation of the tangible personal property transferred in a technology transfer agreement, and that tax must instead be applied as specified in the application provisions of the Revenue and Taxation Code.

##### Clip Art Included in Definition of Special Printing Aids

GAG also proposes to include clip art within the definition of a special printing aid in Regulation 1541(a)(1). Within the definition of clip art, GAG proposes to delete the statement that "images that are enlarged, reduced or rotated are not considered produced to the special order of the customer" in subdivision (a)(5).

Staff does not believe that the definition of special printing aids should be amended to include clip art. Clip art is not produced to the special order of the customer such that it can be considered as having a unique utility to that particular customer. Staff believes that the previous amendment to Regulation 1540 which explains that "unique utility" is more than enlarging, reducing or rotating pre-existing clip art is correct.

##### Camera Ready Typography

In Regulation 1541(e)(2), GAG proposes to delete the language "provided it does not contain artwork other than clip art" from the definition of camera-ready copy that is considered nontaxable composed type. It is staff's understanding that the very purpose for including the provisions regarding clip art in Regulation 1541 was to draw a distinction between clip art and other forms of artwork, and to provide that including clip art only with text in typography did not change the character of that typography. That is, the purpose for including the language in subdivision (e)(2) was to make clear that the transfer of otherwise qualifying typography would remain qualifying typography, even if it contained clip art, the charge for which is not taxable.

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Staff believes that the distinction was correct, and remains correct. Thus, staff believes that the language should not be changed so that it remains clear that the inclusion of clip art along with otherwise qualifying typography does not change the character of the typography, while the transfer of artwork other than clip art does not qualify as typography.

#### Definition of Terms in Regulation 1543

GAG proposes to clarify the definition of terms in Regulation 1543(a) and to provide definitions for illustrators and photographers. Staff agrees to clarify the terms and proposes alternative language in subdivision (a).

#### **American Association of Advertising Agencies' Proposal**

On July 2, 2001, Mr. Don Jung, representing the American Association of Advertising Agencies (AAAA), provided comments and proposed language for Regulation 1540. AAAA's proposal addresses four specific areas. At this time, no language or recommendations have been provided for Regulations 1541 and 1543. AAAA's recommendation has no operative date.

#### Contract of Sale

AAAA states that there is not a clear definition of "contract of sale" under Regulation 1540(d)(1). To clarify this issue, AAAA suggests that the purchase order signed by the client be considered a contract of sale. Prior to the advertising agency obtaining any work from the client, there is usually an agency-client agreement signed by both parties. In that agreement, certain language might contain comments such as "client should own all rights to all ideas created or conveyed." AAAA believes that such a wording represents a title clause stipulation. However, the advertising agency may never give anything tangible to the client. AAAA believes that the real obligation to obtain artwork is the purchase order, and that it should be regarded as the contract of sale.

Staff believes that the contract of sale consists of all documents comprising the obligation of the parties for the sale and purchase of the tangible personal property in question. A contract of sale may consist of a single contract document or multiple contract documents. For example, the parties may enter into a master agreement establishing the terms of future sales. They may then exchange a purchase order that includes additional terms including the specific property that will be purchased and sold, and the sales price for that property. In this example, not all of the terms of the sale and purchase are included in the purchase order. Rather, the contract of sale is the master agreement as modified later by the purchase order. When the parties agree to purchase and sell property pursuant to a later purchase order, that contract consists of the master agreement as modified by that later purchase order. Therefore, staff does not believe that the

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purchase order can be the “contract of sale” in itself. Staff proposes language to this effect in Regulation 1540(a)(3).

#### One-Time Transfer of Tangible Personal Property

AAAA proposes to amend Regulation 1540(d)(1) to treat a one-time transfer of all electronic disks and other tangible personal property upon the termination of the relationship with the advertising agency, commercial artist or designer, as a nontaxable service.

AAAA has a concern regarding the application of tax when the client terminates its relationship with the advertising agency and requests a one-time transfer of all the electronic disks and other hard copies to its possession. Since all the items have been previously invoiced to the client, the client does not believe he or she should get taxed twice.

Staff does not believe this presents a case of double taxation. Staff believes that if the client always had the right to obtain title to or possession of the tangible personal property and tax had been paid accordingly, no further tax would be due when the property is transferred to the client upon termination of its master agreement. On the other hand, if the contract of sale requires or permits the advertising agency, commercial artist or designer to destroy the tangible personal property and that property is destroyed rather than being transferred to the client, that destruction would not be a sale, and tax would not apply to that destruction. However, staff believes that if the contract of sale provides that the client will not obtain title to or possession of that tangible personal property, unless and until the termination of the master agreement with the advertising agency, commercial artist or designer, the transfer to the client at that time is a sale of tangible personal property and tax applies in the same manner as would have applied had the tangible personal property been transferred to the client when the property was first created. Staff proposes language to this effect in Regulation 1540(d)(2)(B).

#### Digital Pre-Press Instruction

AAAA states that a major area of concern is in regard to advertising agencies who provide artwork on an electronic medium that is then sent electronically to a pre-press production house where the artwork is placed into a high speed resolution process to enhance the colors using specialized software like SyQuest. This process has to be done before the artwork can be given to a printer. In the current Regulation 1540(a)(2)(A), the transfer of a file qualifying as electronic or digital pre-press instruction as defined by the provisions of Regulation 1541, *Printing and Related Arts*, is nontaxable.

AAAA notes that some of the Board’s audit staff treat this type of transaction as taxable under Regulation 1541(d)(2) as a special printing aid. AAAA believes that the pre-press digital disk

## SECOND DISCUSSION PAPER

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should not be taxed and that audit staff should not be implying that advertising agencies, commercial artists and designers are acting as printers. Therefore, AAAA suggests adding language to Regulation 1540 that advertising agencies, commercial artists and designers are not acting as printers and that the transfer of electronic or digital pre-press instruction by remote telecommunications is not a printing aid.

Staff agrees to clarify the definition of digital pre-press instruction and proposes to provide clarification in subdivision (d)(2)(C) of Regulation 1540. Digital pre-press instruction is also defined in subdivisions (a)(4) and (f) of Regulation 1541. If the transaction qualifies as an electronic or digital pre-press instruction, such a transfer is a nontaxable transfer of a custom program. Therefore, staff believes that the definition stands alone and that if a special printing aid qualifies as digital pre-press instruction, stating that it is not a printing aid is unnecessary.

#### Allocation of Printing Aids in a Lump-Sum Contract

AAAA believes clarification is necessary in Regulation 1540(d)(2) to address situations where the cost allocation of printing aids that qualify as finished art in a lump-sum contract is less than the cost of the printing aids. AAAA proposes to amend Regulation 1540(d)(2) to clarify that a cost allocation of printing aids in a lump-sum contract would be subject to the application of tax under subdivision (b)(1) if the printing aid is equal to or exceeds the purchase price of the artwork.

For taxable sales of artwork that include nontaxable services, staff agrees that the lump-sum sale of finished art would be subject to the application of tax that rebuttably presumes that 75% of the combined charge is for nontaxable services and 25% of the combined charge is the taxable selling price of the tangible personal property. This presumption assumes that the 25% of the combined charge is not less than the cost to the advertising agency, commercial artist, or designer of the tangible personal property sold. If the cost of the tangible personal property sold is more than the 25% of the combined charge, the taxable selling price is deemed to be the cost of the tangible personal property sold. Staff proposes alternative language in Regulation 1540(d)(2)(D) to clarify this issue.

Finally, AAAA has provided its proposed language to provide clarification on the issue involving reproduction rights governed by the *Preston* case. Included in staff's recommendation for subdivision (d)(4)(B) of Regulation 1540, is alternative language that staff believes addresses AAAA's concerns regarding reproduction rights.



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##### **Mr. Patrick Leone's Proposal to Delete the Phrase "Ultimately Subject to Sales Tax"**

Mr. Patrick Leone, CPA, proposes that the terminology "ultimately subject to sales tax" as used in Regulation 1541 not be replaced. Mr. Leone believes that this language clearly exempts resales, which are ultimately sold and taxed. By changing this wording, Mr. Leone believes that the meaning of the regulation will significantly change and thereby, will take away a tax benefit previously given to printers. In addition, if the phrase is deleted, Mr. Leone proposes that the change be applied on a prospective basis.

Staff, on the other hand, believes that this terminology has caused confusion within the industry and among audit staff. This is evident by taxpayers' written requests for clarification on the terminology "ultimately subject to sales tax" because it referred to transactions involving exempt sales as well as taxable sales. The amendments proposed by staff reflect staff's interpretation and application of the current language but in a manner that clearly describes the application of tax to each transaction whether it is a retail sale of printed matter and special printing aids or a nontaxable sale of printed matter and special printing aids. The effect of replacing this terminology will not be to change the application of tax or the meaning of the regulation. As a result, no operative date is recommended.

##### **VI. Summary**

The proposed amendment of Regulations 1540, 1541, and 1543 is scheduled for discussion at the February 5, 2002 Business Taxes Committee meeting. Staff welcomes any comments, suggestions, and input from interested parties to clarify the application of tax to graphic arts and related enterprises to ensure conformity among the three regulations.

Prepared by the Program Planning Division, Sales and Use Tax Department

Current as of 10/22/2001

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**Comparison of Current and Proposed Language**  
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Current Regulatory Language	Regulatory Language Proposed by Staff	Regulatory Language Proposed by GAG	Regulatory Language Proposed by AAAA
<p><b>Regulation 1540. ADVERTISING AGENCIES, COMMERCIAL ARTISTS AND DESIGNERS.</b></p> <p><b>(a) ADVERTISING AGENCIES.</b></p> <p>(1) GENERAL. Advertising agencies provide clients with both services and tangible personal property. Services include, without limit, consultation, consumer research, and media placement. Tangible personal property includes, without limit, video and audio productions, print advertisements, brochures, finished artwork, and other printed matter. When an advertising agency provides services unrelated to the transfer of tangible personal property or when the tangible personal property transferred is incidental to the services, the charges for those services are nontaxable.</p>	<p><b>Regulation 1540. ADVERTISING AGENCIES, COMMERCIAL ARTISTS AND DESIGNERS.</b></p> <p><b>(a) <del>ADVERTISING AGENCIES</del>DEFINITIONS.</b></p> <p>(1) <del>GENERAL</del> <u>ADVERTISING AGENCIES</u>. Advertising agencies provide clients with both services (<u>such as consultation, consumer research, and media placement</u>) and tangible personal property (<u>such as video and audio productions, and print advertisements, brochures, finished art, and other printed matter</u>) for purposes of advertising of the <u>goods and services of its clients</u>. <del>Services include, without limit, consultation, consumer research, and media placement. Tangible personal property includes, without limit, video and audio productions, print advertisements, brochures, finished artwork, and other printed matter. When an advertising agency provides services unrelated to the transfer of tangible personal property or when the tangible personal property transferred is incidental to the services, the charges for those services are nontaxable.</del></p>	<p><b>Regulation 1540. ADVERTISING AGENCIES, COMMERCIAL ARTISTS AND DESIGNERS.</b></p> <p><b>(a) ADVERTISING AGENCIES.</b></p> <p>(1) GENERAL. Advertising agencies provide clients with both services and tangible personal property. Services include, without limit, consultation, consumer research, and media placement. Tangible personal property includes, without limit, video and audio productions, print advertisements, brochures, finished artwork, and other printed matter. When an advertising agency provides services unrelated to the transfer of tangible personal property or when the tangible personal property transferred is incidental to the services, the charges for those services are nontaxable. <u>Advertising agencies are not acting as printers.</u></p>	<p><b>Regulation 1540. ADVERTISING AGENCIES, COMMERCIAL ARTISTS AND DESIGNERS.</b></p> <p><b>(a) ADVERTISING AGENCIES.</b></p> <p>(1) GENERAL. Advertising agencies provide clients with both services and tangible personal property. Services include, without limit, consultation, consumer research, and media placement. Tangible personal property includes, without limit, video and audio productions, print advertisements, brochures, finished artwork, and other printed matter. When an advertising agency provides services unrelated to the transfer of tangible personal property or when the tangible personal property transferred is incidental to the services, the charges for those services are nontaxable. <u>Advertising agencies are not acting as printers.</u></p>

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	<p>Application of tax to the sale of tangible personal property and any services related to the sale is dependent on the type of property being sold and the relationship of the advertising agency to the client.</p> <p>(2) SPECIFIC SITUATIONS.</p> <p><b>(A) Electronic or Digital Artwork.</b>                      Electronic or digital art is the process of using computer software and hardware to compile or compose finished art. Elements of the process include: creation of original artwork or photographs, scanning of artwork or photographs, composition and design of text, insertion and manipulation of scanned and original digital artwork, photographs, or text.</p> <p>A transfer of electronic or digital art from an advertising agency, commercial artist or designer to a client or to a third party on behalf of a client that includes text or images or a combination of both, is not taxable if, (1) the file containing the electronic or digital art is transferred through remote telecommunications, such as a modem, or (2) the file is downloaded on the client's computer by the advertising agency, commercial artist or designer and the client does not obtain title to or possession of any tangible</p>	<p><del>Application of tax to the sale of tangible personal property and any services related to the sale is dependent on the type of property being sold and the relationship of the advertising agency to the client.</del></p> <p><del>-(2) SPECIFIC SITUATIONS.</del></p> <p><del>—(A) Electronic or Digital Artwork.</del>  <del>Electronic or digital art is the process of using computer software and hardware to compile or compose finished art. Elements of the process include: creation of original artwork or photographs, scanning of artwork or photographs, composition and design of text, insertion and manipulation of scanned and original digital artwork, photographs, or text.</del></p> <p><del>A transfer of electronic or digital art from an advertising agency, commercial artist or designer to a client or to a third party on behalf of a client that includes text or images or a combination of both, is not taxable if, (1) the file containing the electronic or digital art is transferred through remote telecommunications, such as a modem, or (2) the file is downloaded on the client's computer by the advertising agency, commercial artist or designer and the client does not obtain title to or possession of any tangible</del></p>			

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<p>personal property, such as a diskette or compact disk. The advertising agency, commercial artist, or designer should document the downloading of electronic artwork in the manner set forth in subdivision (d)(2). Transfer of a file qualifying as electronic or digital pre-press instruction as defined by the provisions of Regulation 1541, Printing and Related Arts, is nontaxable.</p> <p>A transfer of title to or possession of a file on electronic media, such as a diskette or compact disc, is subject to tax as stated in subdivision (d)(2).</p>	<p><del>personal property, such as a diskette or compact disk. The advertising agency, commercial artist, or designer should document the downloading of electronic artwork in the manner set forth in subdivision (d)(2). Transfer of a file qualifying as electronic or digital pre-press instruction as defined by the provisions of Regulation 1541, Printing and Related Arts, is nontaxable.</del></p> <p><del>A transfer of title to or possession of a file on electronic media, such as a diskette or compact disc, is subject to tax as stated in subdivision (d)(2).</del></p> <p><u>(2) COMMERCIAL ARTISTS AND DESIGNERS. The term “commercial artists” includes commercial photographers. Commercial artists and designers provide services, electronic artwork, and tangible personal property to their clients. Services they provide to their clients include the creation and development of ideas, concepts, looks, or messages. Electronic artwork they provide may be transferred through remote telecommunications such as by modem or over the Internet, or by electronic media such as tape or compact disc. Tangible personal property they provide may include electronic media on</u></p>		

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		<p><u>which electronic artwork is transferred to the client, hard copies of the electronic artwork, and manually created art.</u></p> <p><u>(3) CONTRACT OF SALE. A contract of sale consists of all documents comprising the obligation of the parties for the sale and purchase of the tangible personal property in question. A contract of sale may consist of a single contract document. A contract of sale may also consist of more than one document. For example, the parties may enter into a master agreement establishing the terms of their future sales. They may then exchange a purchase order that includes additional terms, including the specific property that will be purchased and sold, and the sales price for that property. In this example, not all terms of the sale and purchase are included in the master agreement, nor are they included in the purchase order. Rather, the contract of sale in this circumstance is the master agreement as modified by the purchase order. When the parties agree to purchase and sell property pursuant to a later purchase order, that contract of sale consists of the master agreement as modified by that later purchase order.</u></p> <p><u>(4) ELECTRONIC OR DIGITAL ARTWORK. Electronic or digital artwork is artwork created through the</u></p>			

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		<p><u>use of computer hardware and software processes which results in artwork that can be transmitted to others via electronic or digital means (that is, transmitted through remote telecommunications such as by modem or over the Internet, or by electronic media such as tape or compact disc). Elements of the process include the creation of original artwork or photographs, scanning of artwork or photographs, composition and design of text, insertion and manipulation of scanned and original digital artwork, photographs, or text. Electronic or digital artwork does not include artwork that is transferred to customers in a tangible form, other than on electronic media, even where such artwork may have been manufactured or produced in part or in whole by computer hardware and software processes.</u></p> <p><u>(5) FINISHED ART. Finished art is the final artwork used for actual reproduction by photomechanical or other processes, or used for display. It includes electronic art, illustrations (e.g. drawings, diagrams, halftones, or color images), photographs, sculptures, paintings, and handlettering. Blueprints, diagrams, and instructions for signage furnished to a client as the result of environmental graphic design services are not finished art.</u></p>			

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	<p><b>(B) Agency Acting as an Agent for Its Client.</b> An agent is one who represents another, called the principal, in dealings with third persons. (Civil Code, Section 2295.) To the extent an advertising agency acts as an agent of its client in acquiring tangible personal property, it is neither a purchaser of the property with respect to the supplier nor a seller of the</p>	<p><u>(6) INTERMEDIATE PRODUCTION OR PRINTING AIDS.</u> Intermediate production or printing aids include items such as artwork, illustrations, photography, photo engravings, and other similar materials that are used in the production or fabrication of other property such as finished art.</p> <p><u>(7) PRELIMINARY ART.</u> Preliminary art includes roughs, visualizations, layouts and comprehensives, title to which does not pass to the client, but which property is prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into or before approval is given for preparation of finished art to be furnished or licensed by the seller to his or her client.</p> <p><b><u>(b) SITUATIONS SPECIFIC TO ADVERTISING AGENCIES.</u></b></p> <p><b><u>(B1) ADVERTISING AGENCY ACTING AS AN AGENT FOR ITS CLIENT.</u></b> An agent is one who represents another, called the principal, in dealings with third persons. (Civil Code, Section 2295.) To the extent an advertising agency acts as an agent of its client in acquiring tangible personal property, it is neither a purchaser of the property with</p>			

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	<p>property with respect to its principal. Because of the unique relationship between advertising agencies and clients, it is rebuttably presumed that an advertising agency qualifies as an agent when acquiring tangible personal property on behalf of its client. However, an agency is not an agent of its client with respect to tangible personal property fabricated or produced in-house by the agency's own employees and sold to its client.</p> <p>As an agent for its client, sales or use tax is due on the purchase price from the suppliers to the advertising agency. Tax</p>	<p>respect to the supplier nor a seller of the property with respect to its principal. Because of the unique relationship between advertising agencies and clients, <u>unless the advertising agency elects non-agent status under subdivision (b)(2)(A) or is the retailer of the property under subdivision (b)(2)(B) or (c)(1),</u> it is rebuttably presumed that an advertising agency <del>qualifies as an</del> <u>acts as the agent of its client</u> when acquiring tangible personal property on behalf of its client. <del>However, an agency is not an agent of its client with respect to tangible personal property fabricated or produced in-house by the agency's own employees and sold to its client.</del></p> <p><u>(A) A supplier to an advertising agency is regarded as having made a retail sale unless it takes a resale certificate from the advertising agency. Otherwise the supplier has the burden of establishing that the advertising agency elected non-agent status under subdivision (b)(2)(A) or is the retailer of the property under subdivision (b)(2)(B) or (c)(1) and thus purchased the property for resale.</u></p> <p><del>—(B) As an agent for its client</del> <u>When an advertising agency is the agent of its client for the purchase of tangible</u></p>			



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<p>does not apply to the charge made by an advertising agency to its client for reimbursement, including tax reimbursement, charged by a supplier or to charges or fees for an agency's services directly related to such acquisitions of tangible personal property.</p> <p>An advertising agency may not issue a resale certificate when making purchases as an agent. It will be presumed that an advertising agency who issues a resale certificate to a supplier is purchasing tangible personal property on its own behalf for resale and is not acting as an agent for its client. However, the advertising agency may provide evidence to prove that the presentation of the resale certificate was erroneous and that the advertising agency was acting as an agent of its client. If the resale certificate was</p>	<p><u>personal property under subdivision (b)(1), sales or use tax is due on the purchase price from the suppliers to the advertising agency. Tax does not apply to the charge made by an advertising agency to its client for reimbursement, including tax reimbursement, charged by a supplier or to charges or fees for an advertising agency's services directly related to such acquisitions of tangible personal property. If the advertising agency does not pay the applicable use tax to the supplier on the client's behalf, the advertising agency is liable for that use tax and must report and pay it to the Board. The advertising agency's liability for the use tax is not extinguished unless the client has self-reported and paid the tax to the Board.</u></p> <p><u>(C)</u> An advertising agency may not issue a resale certificate when making purchases as an agent. It will be presumed that an advertising agency who issues a resale certificate to a supplier is purchasing tangible personal property on its own behalf for resale and is not acting as an agent for its client. However, the advertising agency may provide evidence to prove that the presentation of the resale certificate was erroneous and that the advertising agency was acting as an agent of its client. If the resale certificate was</p>		

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<p>issued in error, the advertising agency is liable for use tax on the cost of tangible personal property purchased under the certificate unless, 1. The agency has already paid tax to the supplier or to the Board, or 2. The client has self-reported the tax.</p> <p>(3) ADVERTISING AGENCIES ACTING AS RETAILERS.</p> <p><b>(A) Election of Non-Agent Status.</b> An advertising agency may elect non-agent status with respect to sales to its client. This election must be supported by a specific written statement in its contract or agreement with the client. Alternatively, a statement may be included on an agency's invoice to its client. Statements should include the following or similar language: "(Agency name) does not qualify as an agent of (client name) for purposes of this transaction."</p> <p>An agency that elects non-agent status is a retailer with respect to tangible personal property sold to its clients. The agency may issue a resale certificate to its suppliers for tangible personal property that it is planning to resell to clients or to</p>	<p>issued in error, the advertising agency is liable for use tax on the cost of tangible personal property purchased under the certificate unless, <del>1. The</del> <u>advertising</u> agency has already paid tax to the supplier or to the Board, or <del>2. The</del> <u>client</u> has self-reported <u>and paid</u> the tax <u>to the Board</u>.</p> <p>(<del>3</del>) ADVERTISING AGENCY<u>IES</u> ACTING AS <u>A</u> RETAILERS.</p> <p><b>(A) Election of Non-Agent Status.</b> An advertising agency may elect non-agent status with respect to sales to its client. This election must be supported by a specific written statement in its contract <u>of sale or agreement</u> with the client. Alternatively, a statement may be included on an <u>advertising</u> agency's invoice to its client. Statements should include the following or similar language: "<u>(Advertising Agency's name)</u> <del>does not qualify</del> <u>will not be acting</u> as an agent of (client's name) for purposes of this transaction."</p> <p>An <u>advertising</u> agency that elects non-agent status is a retailer with respect to tangible personal property sold to its clients. The <u>advertising</u> agency may issue a resale certificate to <del>it's</del> <u>a</u> suppliers for tangible personal property that it is</p>		

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<p>incorporate into property that will be sold to clients.</p> <p>The taxable selling price is the separately stated charge for the tangible personal property. If there is no separately stated charge, the taxable selling price may be calculated as shown in subdivision (b).</p> <p><b>(B) Items Produced or Fabricated by an Agency In-House.</b> Advertising agencies are retailers of tangible personal property produced or fabricated by their own employees. Advertising agencies are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees. However, in the case of intermediate production or printing aids used by the agency's employees to fabricate tangible personal property, it will be presumed that an advertising agency passes title to the aids to the client prior to use by the agency and the measure of tax will be computed in the same manner as provided in Regulation 1541 for special printing aids. Intermediate production or printing aids include, but are not limited to, artwork, illustrations, photography, photo engravings, and other similar materials.</p>	<p>planning to resell to clients or to incorporate into property that will be sold to clients <u>prior to use</u>.</p> <p>The taxable selling price is the separately stated charge for the tangible personal property. If there is no separately stated charge, the taxable selling price may be calculated as shown in subdivision (b).</p> <p><b>(B) Items Produced or Fabricated by an Advertising Agency In-House.</b> Advertising agencies are retailers of tangible personal property produced or fabricated by their own employees. Advertising agencies are not agents of their clients with respect to the acquisition of materials incorporated into <u>such items</u> of tangible personal property prepared by their employees <u>they produce or fabricate</u>. <del>However, in the case of intermediate production or printing aids used by the agency's employees to fabricate tangible personal property, it will be presumed that an advertising agency passes title to the aids to the client prior to use by the agency and the measure of tax will be computed in the same manner as provided in Regulation 1541 for special printing aids. Intermediate production or printing aids include, but are not limited to, artwork, illustrations, photography, photo engravings, and other similar materials.</del></p>	<p><b>(B) Items Produced or Fabricated by an Agency In-House.</b> Advertising agencies are retailers of tangible personal property produced or fabricated by their own employees. Advertising agencies are not agents of their clients with respect to the acquisition of materials incorporated into items of tangible personal property prepared by their employees. However, in the case of intermediate production or printing aids used by the agency's employees to fabricate tangible personal property, it will be presumed that an advertising agency passes title to the aids to the client prior to use by the agency and the measure of tax will</p>	

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	<p>Except for artwork, tax is due on the taxable selling price of tangible personal property fabricated or produced by the agency's employees. Artwork shall be taxed in the manner set forth in subdivision (b)(1) or (d). An advertising agency should issue a resale certificate for items that become an ingredient or component part of such tangible personal property and for intermediate production or printing aids. The term "ingredient or component part of other tangible personal property" includes only those items that become physically incorporated into the property and not those which are merely consumed or used in the production of the property sold.</p>	<p><del>Except for artwork, tax is due on the taxable selling price of tangible personal property fabricated or produced by the advertising agency's employees. The taxable selling price is the separately stated charge for the property sold except as provided in subdivision (c)(2) or (d)(2)(D).—Artwork shall be taxed in the manner set forth in subdivision (b)(1) or (d).—</del>An advertising agency should issue a resale certificate <u>for when purchasing</u> items that become an ingredient or component part of such tangible personal property and for intermediate production or printing aids. The term "ingredient or component part of other tangible personal property" includes only those items that become physically incorporated into the property and not those which are merely consumed or used in the production of the property sold.</p>	<p>be computed in the same manner as provided in Regulation 1541 for special printing aids. <del>Intermediate production or printing aids include, but are not limited to, artwork, illustrations, photography, photo engravings, and other similar materials.</del></p>		

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	<p><b>(b) LUMP-SUM SALES OF TANGIBLE PERSONAL PROPERTY.</b></p> <p>(1) An agency that has a contract or agreement to sell tangible personal property for a lump-sum amount is a retailer of the tangible personal property and tax applies to the lump-sum selling price, except for artwork. An advertising agency, commercial artist or designer making a lump-sum sale of tangible personal property to a client may issue a resale certificate to a supplier.</p> <p>On sales of artwork for which an advertising agency, commercial artist or designer makes a lump-sum charge that includes both the nontaxable services defined in subdivision (d)(1) and finished art, it will be rebuttably presumed that 75% of the lump-sum charge is for the nontaxable services.</p> <p>(2) TAXABLE SELLING PRICE. If advertising agencies, commercial artists or designers combine charges for nontaxable services, such as media</p>	<p><b>(bc) LUMP-SUM SALES OF TANGIBLE PERSONAL PROPERTY.</b></p> <p>(1) An <u>advertising</u> agency that has a contract <u>of sale under which it or</u> <del>agreement to sell</del> tangible personal property for a lump-sum amount is a retailer of the tangible personal property <u>and the taxable selling price is that</u> <del>and tax applies to the</del> lump-sum selling price, except <u>for artwork as provided in subdivision (d)(2)(D) for taxable sales of artwork that include nontaxable services under subdivision (d)(1).</u> <del>for artwork</del> An advertising agency, commercial artist, or designer making a lump-sum sale of tangible personal property to a client may issue a resale certificate to a supplier.</p> <p><del>On sales of artwork for which an advertising agency, commercial artist or designer makes a lump-sum charge that includes both the nontaxable services defined in subdivision (d)(1) and finished art, it will be rebuttably presumed that 75% of the lump-sum charge is for the nontaxable services.</del></p> <p>(2) TAXABLE SELLING PRICE. If <u>an</u> advertising agency<u>ies</u>, commercial artists, or designers <u>combine</u> charges for nontaxable services, such as media</p>			

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<p>placement, with the charges for tangible personal property of which the agencies, artists or designers are the retailers, they shall report a "taxable selling price" for the tangible personal property that includes the total of: 1. direct labor, 2. the cost of purchased items that become an ingredient or component part of the tangible personal property and the cost of any intermediate production or printing aids, and 3. a reasonable markup. An advertising agency, commercial artist or designer must keep sufficient records to document the basis for the reported taxable selling price.</p> <p>(3) SPECIFIC NONTAXABLE CHARGES. The following and similar fees, commission, and services are nontaxable if separately stated. If not separately stated, these charges are not considered direct labor when calculating a taxable selling price as defined in subdivision (b)(2).</p> <p>(A) Agent fees added to purchases of tangible personal property by agencies</p>	<p>placement, with the charges for tangible personal property <del>of for</del> which the <u>advertising agencies</u>, artists, or designers <u>are is</u> the retailers, <del>they shall report a "the taxable selling price" for</del> of the tangible personal property <del>that</del> includes the total of: <del>1. direct labor, 2. the cost of</del> purchased items that become an ingredient or component part of the tangible personal property and the cost of any intermediate production or printing aids; <del>and 3. a reasonable markup.</del> An advertising agency, commercial artist, or designer must keep sufficient records to document the basis for the reported taxable selling price.</p> <p>(3) SPECIFIC NONTAXABLE CHARGES. The following and similar fees <u>and commissions and services are not taxable, whether separately stated or included in a lump-sum charge. When part of a lump-sum charge that includes the sale of tangible personal property, these charges are not nontaxable if separately stated.</u> If not separately stated, <del>these charges are not considered "direct labor"</del> when calculating <u>a the</u> taxable selling price <del>as defined in</del> <u>under</u> subdivision <del>(bc)</del>(2).</p> <p>(A) <del>Agent fees added to purchases of tangible personal property</del> <u>Fees charged</u></p>		

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<p>established as agents for their clients as compensation for their performances of services related to such purchases.</p> <p><b>(B)</b> Media commissions derived by agencies for placement of advertising whether paid by the medium, by another agency, or by the client. The service of placing of advertising is not a service that is a part of a sale of tangible personal property.</p> <p><b>(C)</b> Commissions paid to agencies by suppliers. Examples of such commissions are those paid to an agency by a premium manufacturer (or distributor) or a direct-by-mail supplier.</p> <p><b>(D)</b> Consultation and concept development fees related to client discussion, development of ideas and other services. Tangible personal property produced as a result of these services is incidental to the service and nontaxable.</p>	<p>by <u>an advertising agency</u> <del>ies established as agents for their clients</del> as compensation for <del>their performances of services related to such purchases</del> <u>its services when acting as the client's agent when purchasing tangible personal property on the client's behalf.</u></p> <p><b>(B)</b> Media commissions derived by <u>advertising</u> agencies for placement of advertising whether paid by the medium, by another <u>advertising</u> agency, or by the client. <del>The service of placing of advertising is not a service that is a part of a sale of tangible personal property.</del></p> <p><b>(C)</b> Commissions paid to <u>advertising</u> agencies by suppliers. Examples of such commissions are those paid to an <u>advertising</u> agency by a premium manufacturer (or distributor) or a direct-by-mail supplier.</p> <p><b>(D)</b> Consultation and concept development fees related to client discussion, development of ideas, and other services. <u>If the advertising agency transfers to the client</u> <del>Tangible personal property produced as a result of these services, the transfer</del> is incidental to the <u>advertising agency's providing of the service and nontaxable</u> <del>is not a sale of that tangible personal property; the</del></p>		

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<p>(E) Research or account planning that entail consumer research and the application of that research to the client's business or industry.</p> <p>(F) Quality control supervision that entails the proofing and review of printing and other products provided by outside vendors.</p> <p>(G) <b>Separately stated charges for the formulation and writing of copy.</b></p> <p>(4) TAXABLE CHARGES FOR AGENCIES ACTING AS RETAILERS. All other commissions, fees or services exclusively related to the production or fabrication of tangible personal property are taxable and are considered part of direct labor. Such charges include</p>	<p><u>advertising agency is the consumer of tangible personal property transferred to the client incidental to the providing of a service.</u></p> <p>(E) <u>Fees for R</u>research or account planning that entail consumer research and the application of that research to the client's business or industry.</p> <p>(F) <u>Fees for Q</u>quality control supervision that entails the proofing and review of printing and other products provided by outside <del>vendors</del> <u>suppliers</u>.</p> <p>(G) <del>Separately stated</del> <u>Charges</u> for the formulation and writing of copy.</p> <p><u>(H) Charges for reproduction rights that are not taxable pursuant to subdivision (d)(4)(B).</u></p> <p>(4) TAXABLE CHARGES <del>FOR AGENCIES ACTING AS RETAILERS.</del> <u>All other c</u>ommissions, fees, <u>or services and other charges</u> exclusively related to the production or fabrication of tangible personal property are <del>taxable and are considered part of direct labor and are</del></p>	<p><u>(H) Charges for transferring or licensing a copyright interest in, or the right to reproduce, artwork, including but not limited to illustrations, design, and photography.</u></p>	



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	<p>retouching of photographs or other artwork for reproduction, provided the retouching is intended to improve the quality of the reproduction. Retouching for the purpose of repairing or restoring a photograph to its original condition is not taxable.</p> <p>(5) CHARGES AND TRANSACTIONS GOVERNED BY OTHER REGULATIONS.</p> <p>(A) <b>Video or Film Productions.</b> If video or film productions provided by an advertising agency to clients are qualified production services, the application of tax is determined by Regulation 1529, <i>Motion Pictures</i></p> <p>(B) <b>Audio Productions.</b> An audio production provided by an advertising agency to a client falls under the provisions of Regulation 1527, <i>Sound Recording</i>. Tax will apply as defined by that regulation.</p>	<p><u>thus taxable.</u> Such charges include retouching of photographs or other artwork for reproduction, provided the retouching is intended to improve the quality of the reproduction. Retouching for the purpose of repairing or restoring a photograph to its original condition is <u>a repair, the charge for which is not taxable.</u></p> <p><del>(5) CHARGES AND TRANSACTIONS GOVERNED BY OTHER REGULATIONS.</del> <u>FINISHED ART.</u> When an advertising agency provides creative or development services for the sole purpose of furnishing finished art to its client, tax applies as provided in subdivision (d).</p> <p><del>—(A) Video or Film Productions.</del> If video or film productions provided by an advertising agency to clients are qualified production services, the application of tax is determined by Regulation 1529, <i>Motion Pictures</i></p> <p><del>—(B) Audio Productions.</del> An audio production provided by an advertising agency to a client falls under the provisions of Regulation 1527, <i>Sound Recording</i>. Tax will apply as defined by that regulation.</p>			

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<p><b>(C) Typography.</b> Tax applies to charges for typography or composed type obtained from outside vendors as provided in Regulation 1541, <i>Printing and Related Arts</i>.</p> <p><b>(c) COMMERCIAL ARTISTS AND DESIGNERS.</b></p> <p>GENERAL. Commercial artists and designers provide services, electronic artwork, and tangible personal property to their clients. Services include, but are not limited to, the creation and development of ideas, concepts, looks, or messages. Electronic artwork can be transferred either through remote telecommunications, such as a modem, or by electronic media such as diskettes or compact disks. Tangible personal property includes both electronic media on which electronic artwork is transferred to the client and hard copies of the electronic artwork, or manually created art. "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or used for display. It includes, but is not limited to, electronic art, illustrations (e.g. drawings, diagrams, halftones, or color images), photographs, paintings, and handlettering. Blueprints, diagrams, and instructions for signage furnished to a client as the result of environmental</p>	<p><del><b>(C) Typography.</b> Tax applies to charges for typography or composed type obtained from outside vendors as provided in Regulation 1541, <i>Printing and Related Arts</i>.</del></p> <p><del><b>(c) COMMERCIAL ARTISTS AND DESIGNERS.</b></del></p> <p><del>GENERAL. Commercial artists and designers provide services, electronic artwork, and tangible personal property to their clients. Services include, but are not limited to, the creation and development of ideas, concepts, looks, or messages. Electronic artwork can be transferred either through remote telecommunications, such as a modem, or by electronic media such as diskettes or compact disks. Tangible personal property includes both electronic media on which electronic artwork is transferred to the client and hard copies of the electronic artwork, or manually created art. "Finished art" means the final art used for actual reproduction by photomechanical or other processes, or used for display. It includes, but is not limited to, electronic art, illustrations (e.g. drawings, diagrams, halftones, or color images), photographs, paintings, and handlettering. Blueprints, diagrams, and instructions for signage furnished to a client as the result of environmental</del></p>	<p><b>(c) COMMERCIAL ARTISTS AND DESIGNERS.</b></p> <p>GENERAL. Commercial artists and designers provide services, electronic artwork, and tangible personal property to their clients. Services include, but are not limited to, the creation and development of ideas, concepts, looks, or messages. Electronic artwork can be transferred either through remote telecommunications, such as a modem, or by electronic media such as diskettes or compact disks. Tangible personal property includes both electronic media on which electronic artwork is transferred to the client and hard copies of the electronic artwork, or manually created art. "Finished art" means the final art used for actual</p>	<p><b>(c) COMMERCIAL ARTISTS AND DESIGNERS.</b></p> <p>GENERAL. Commercial artists and designers provide services, electronic artwork, and tangible personal property to their clients. Services include, but are not limited to, the creation and development of ideas, concepts, looks, or messages. Electronic artwork can be transferred either through remote telecommunications, such as a modem, or by electronic media such as diskettes or compact disks. Tangible personal property includes both electronic media on which electronic artwork is transferred to the client and hard copies of the electronic artwork, or manually created art. "Finished art" means the final art used for actual reproduction by</p>

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<p>graphic design services are not “finished art.”</p>	<p><del>graphic design services are not “finished art.”</del></p>	<p>reproduction by photomechanical or other processes, or used for display. It includes, but is not limited to, electronic art, illustrations (e.g. drawings, diagrams, halftones, or color images), photographs, paintings, and handlettering. Blueprints, diagrams, and instructions for signage furnished to a client as the result of environmental graphic design services are not “finished art.”</p> <p><u>When commercial artists and designers enter into agreements with a client in which the artist or designer holding a copyright interest in artwork assigns or licenses to the client the right to make and sell a product that is subject to the copyright interest in the transferred artwork, such agreements are designated “technology transfer agreements.” “The right to make and sell a product” includes, but is not limited to, the right to use the</u></p>	<p>photomechanical or other processes, or used for display. It includes, but is not limited to, electronic art, illustrations (e.g. drawings, diagrams, halftones, or color images), photographs, paintings, and handlettering. Blueprints, diagrams, and instructions for signage furnished to a client as the result of environmental graphic design services are not “finished art.”  <u>Commercial artists and designers are not acting as printers.</u></p>

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<p>An advertising agency that provides creative or development services for the sole purpose of furnishing finished art to their clients is subject to tax as provided in subdivision (d).</p> <p><b>(d) APPLICATION OF TAX TO COMMERCIAL ARTISTS, DESIGNERS AND ADVERTISING AGENCIES.</b></p>	<p><del>An advertising agency that provides creative or development services for the sole purpose of furnishing finished art to their clients is subject to tax as provided in subdivision (d).</del></p> <p><b>(d) APPLICATION OF TAX TO <u>ADVERTISING AGENCIES</u>, COMMERCIAL ARTISTS, <u>AND DESIGNERS AND ADVERTISING AGENCIES</u>. The application of tax is</b></p>	<p><u>artwork in the manufacturing process, such as in the production of rubber stamps, books, packaging, games, posters, greeting cards, or publications. “Subject to the copyright interest” means that the client would not be able to legally exploit the artwork in the contracted manner in the absence of the transfer of license or assignment of the copyright interest from the interestholder.</u></p> <p>An advertising agency that provides creative or development services for the sole purpose of furnishing finished art to their clients is subject to tax as provided in subdivision (d). <u>The application of tax to transfers of finished art transferred as part of a technology transfer agreement is governed by subdivision (d)(6).</u></p>	<p><b>(d) APPLICATION OF TAX TO COMMERCIAL ARTISTS, DESIGNERS AND ADVERTISING AGENCIES.</b></p>

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	<p>(1) SERVICES. Services performed to convey ideas, concepts, looks or messages to a client may result in a transfer, enhancement or revision of either electronic artwork, hard copies of electronic artwork, or copies of manually prepared artwork. If charges for such services are separately stated as “design charges,” “preliminary art,” “concept development,” or any other designation that clearly indicates that the charges are for such services and not for finished art, they are nontaxable unless the contract of sale provides that the commercial artist or designer or advertising agency will pass to the client title or the right to permanent</p>	<p><u>not determined by a person’s characterization of itself as an advertising agency, commercial artist or designer, printer, or otherwise, but rather based on what is actually provided to the client. A person may act in multiple capacities, so that the same person may act as an advertising agency for some transactions, as a commercial artist or designer for some transactions, and as a printer for other transactions. When a person acts as an advertising agency or as a commercial artist or designer, Regulation 1540 governs the application of tax; when a person acts as a printer, Regulation 1541 governs the application of tax.</u></p> <p>(1) SERVICES. Services performed to convey ideas, concepts, looks, or messages to a client may result in a transfer, enhancement, or revision of either electronic artwork, hard copies of electronic artwork, or copies of manually prepared artwork. If charges for such services are separately stated as “design charges,” “preliminary art,” “concept development,” or any other designation that clearly indicates that the charges are for such services and not for finished art, they are nontaxable unless the contract of sale provides that the <u>advertising agency, commercial artist, or designer</u> <del>or advertising agency</del> will pass to the client</p>		<p>(1) SERVICES. Services performed to convey ideas, concepts, looks or messages to a client may result in a transfer, enhancement or revision of either electronic artwork, hard copies of electronic artwork, or copies of manually prepared artwork. If charges for such services are separately stated as “design charges,” “preliminary art,” “concept development,” or any other designation that clearly indicates that the charges are</p>

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<p>possession of the electronic media or hard copy.</p> <p>A commercial artist or designer or advertising agency who provides nontaxable services is the consumer of tangible personal property used in the performance of such services and tax applies to the sale of property to the commercial artist or designer or advertising agency.</p>	<p>title or the right to permanent possession of the <u>artwork in tangible form, such as on electronic media or hard copy, or permanent possession of the artwork in tangible form is, in fact, transferred to the client. However, if the contract provides that the client owns the concepts embodied in tangible personal property that is owned and possessed by the advertising agency, commercial artist, or designer so that such concepts cannot be used on behalf of any other person, that contract provision does not constitute the passage of title to tangible personal property to the client, provided the client does not thereby obtain the actual title to, or permanent possession of, the tangible personal property embodying the concepts.</u></p> <p><del>A</del><u>Tangible personal property developed and used during services performed to convey ideas, concepts, looks, or messages is consumed in the performance of those services. Unless the advertising agency, commercial artist, or designer or advertising agency who provides nontaxable services passes title or permanent possession of such property to the client prior to any use as discussed in the previous paragraph, the advertising agency, commercial artist, or designer is</u></p>		<p>for such services and not for finished art, they are nontaxable unless the contract of sale provides that the commercial artist or designer or advertising agency will pass to the client title or the right to permanent possession of the electronic media or hard copy <u>or tangible personal property. A contract of sale is the purchase order signed by the client. A one-time transfer of electronic media or hard copy or tangible personal property at the time the client terminates its relationship with the advertising agency, commercial artist or designer is a nontaxable service.</u></p>

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<p>(2) ELECTRONIC ARTWORK AND FINISHED ART. A transfer of electronic artwork from a commercial artist or designer or advertising agency to a customer or to a third party on behalf of the customer is not taxable if the file containing the electronic artwork is transferred through remote telecommunications, or if the file is loaded on the customer's computer by the commercial artist or designer or advertising agency, and the customer does not obtain title to or possession of any tangible personal property, such as electronic media. The graphic artist or advertising agency should document his or her transfer and loading of electronic artwork on the client's computer by a statement on the invoice or contract with</p>	<p>the consumer of such tangible personal property used <del>in the performance of such services</del> and tax applies to the sale of property to, <u>or to the use of the property by, the advertising agency, commercial artist, or designer or advertising agency.</u> <del>If, however, the advertising agency, commercial artist, or designer passes title to such tangible personal property to its client, sales tax applies to the sale of the tangible personal property by the advertising agency, commercial artist, or designer.</del></p> <p>(2) ELECTRONIC <u>OR DIGITAL</u> ARTWORK AND FINISHED ART.</p> <p>(A) A transfer of electronic artwork from <del>an advertising agency, commercial artist, or designer or advertising agency</del> to a <del>customer</del> client or to a third party on <u>the client's behalf of the customer</u> is not a <u>transfer in tangible form and the charges for such a transfer are not</u> taxable if the file containing the electronic artwork is transferred through remote telecommunications (<u>such as by modem or over the Internet</u>), or if the file is loaded on the <del>customer's</del> client's computer by the <u>advertising agency, commercial artist, or designer or advertising agency,</u> and the <del>customer</del> client does not obtain title to or possession of any tangible personal</p>	<p>(2) ELECTRONIC ARTWORK AND FINISHED ART. A transfer of electronic artwork from a commercial artist or designer or advertising agency to a customer or to a third party on behalf of the customer is not taxable if the file containing the electronic artwork is transferred through remote telecommunications, or if the file is loaded on the customer's computer by the commercial artist or designer or advertising agency, and the customer does not obtain title to or possession of any tangible personal property,</p>	

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	<p>the following language: “This electronic artwork was loaded onto my computer by (graphic artist’s or seller’s name). No electronic media, such as diskettes or compact disks, or hardcopies containing the artwork were transferred to me.” This statement should be signed or initialed by the client. When such a statement is timely completed, it will be rebuttably presumed that the transfer of electronic artwork is nontaxable. To be timely completed, the statement must be initialed or signed at the time the file is loaded or at the point the transfer is invoiced to the client. In lieu of the statement, the commercial artist or designer or advertising agency may provide other substantive evidence indicating that the artwork was transferred in an exempt manner.</p>	<p>property, such as electronic media <u>or</u> <u>hardcopy</u>. The <del>graphic advertising agency, commercial artist, or designer or</del> <u>advertising agency</u> should document his <del>or her</del> <u>its</u> transfer and loading of electronic artwork on the client’s computer by a statement on the invoice or contract with the following <u>or similar</u> language: “<u>I loaded</u> <del>This</del> <u>electronic artwork was loaded</u> onto my <u>client’s</u> computer <del>by (graphic artist’s or seller’s name)</del>. <u>No and I did not transfer to my client any tangible personal property, such as electronic media, such as diskette or compact disks, or hardcopies, containing the artwork were transferred to me.</u>” This statement should be signed or initialed by the client. When such a statement is timely completed, it will be rebuttably presumed that the transfer of electronic artwork <del>is</del> <u>was not transferred in tangible form and the charges for such transfer are</u> nontaxable. To be timely completed, the statement must be initialed or signed at the time the file is loaded or at the point the transfer is invoiced to the client. In lieu of the statement, the <u>advertising agency, commercial artist, or designer or</u> <del>advertising agency</del> may provide other substantive evidence <u>indicating establishing</u> that the artwork was <u>not</u> transferred in <del>an exempt manner</del> <u>a tangible form</u>.</p>	<p>such as electronic media. The graphic artist or advertising agency should document his or her transfer and loading of electronic artwork on the client’s computer by a statement on the invoice or contract with the following language: “This electronic artwork was loaded onto my computer by (graphic artist’s or seller’s name). No electronic media, such as diskettes or compact disks, or hardcopies containing the artwork were transferred to me.” This statement should be signed or initialed by the client. When such a statement is timely completed, it will be rebuttably presumed that the transfer of electronic artwork is nontaxable. To be timely completed, the statement must be initialed or signed at the time the file is loaded or at the point the transfer is invoiced to the client. In lieu of the statement, the commercial artist or designer or advertising agency may provide other substantive evidence indicating that the</p>		



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		<p><u>(B) If a file is transferred in tangible form (such as on hard copy, tape, or compact disc), the transfer is a sale of tangible personal property and tax applies as specified in subdivision (d)(2)(D) without regard to the time at which that transfer occurs. If the contract of sale provides that the client will not obtain title to or possession of that tangible personal property unless and until the termination of the master agreement with the advertising agency, commercial artist, or designer, the transfer to the client upon such termination of the master agreement is a sale of tangible personal property at that time, and tax applies in the same amount as would have applied had the tangible personal property been transferred to the client when the property was first created. If, however, the client always had the right to obtain title to or possession of the tangible personal property and tax had been paid accordingly, no further tax is due when the property is transferred to the client upon termination of its master agreement with the advertising agency, commercial artist, or designer. If the contract of sale requires or permits the advertising agency, commercial artist, or designer to destroy the tangible personal property and that property is destroyed rather than</u></p>	<p>artwork was transferred in an exempt manner.</p>		

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	<p>The electronic or manual preparation of finished art for use in reproduction or display is not a service. Unless transferred or installed in the manner set forth in the preceding paragraph, tax applies to all charges for finished art, including to all charges for any rights, as provided in subdivision (d)(4), sold with the finished art, such as, without limitation, copyrights or distribution and production rights. If charges for finished art are combined with nontaxable services described in subdivision (d)(1), tax may be reported on a calculated selling price, as defined in subdivision (b)(2) provided the retail selling price also includes the value of rights as provided in subdivision (d)(4). In lieu of using a calculated selling price, commercial artists and</p>	<p><u>being transferred to the client, no tax applies with respect to the destruction.</u></p> <p><u>(C) Subdivisions (d)(2)(A) and (d)(2)(B) do not apply to the transfer of a file qualifying as an electronic or digital pre-press instruction as defined in subdivision (f) of Regulation 1541, regardless of the form in which the file is transferred or the time at which it is transferred. Such a transfer is a nontaxable transfer of a custom computer program.</u></p> <p><u>(D) The electronic or manual preparation of finished art for use in reproduction or display is not a service. Unless transferred or installed in the manner set forth in the preceding paragraph, subdivision (d)(2)(A), the transfer is a sale of tangible personal property and tax applies to all charges for finished art, including to all charges for any rights, as provided in subdivision (d)(4), sold with the finished art, such as, without limitation, copyrights or distribution and production rights. If charges for finished art are combined with nontaxable charges for services described in subdivision (d)(1) and there is no separately stated charge for those services, tax may be reported on a calculated selling price, as defined in</u></p>	<p>The electronic or manual preparation of finished art for use in reproduction or display is not a service. Unless transferred or installed in the manner set forth in the preceding paragraph, <u>or is transferred as part of a technology transfer agreement</u>, tax applies to all charges for finished art, including to all charges for any rights, as provided in subdivision (d)(4), sold with the finished art, such as, without limitation, copyrights or distribution and production rights. If charges for finished art are combined with</p>		

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<p>designers or advertising agencies may use the method described in (b)(1), that is, it will be rebuttably presumed that 75% of a combined charge is for the nontaxable services.</p>	<p><del>subdivision (b)(2) provided the retail selling price also includes the value of rights as provided in subdivision (d)(4). In lieu of using a calculated selling price, commercial artists and designers or advertising agencies may use the method described in (b)(1), that is, it will be rebuttably presumed that 75% of a combined charge is for the nontaxable services.</del> <u>the taxable selling price of the finished art may be calculated as specified in subdivision (c)(2) provided that the reported taxable selling price includes the value of rights as provided in subdivision (d)(4). If the advertising agency, commercial artist, or designer does not report the taxable selling price on this basis, then it will be rebuttably presumed that 75% of the combined charge is for nontaxable services and that 25% of the combined charge is the taxable selling price of the tangible personal property, provided that 25% of the combined charge is not less than the cost to the advertising agency, commercial artist, or designer of the tangible personal property sold. If the cost of the tangible personal property sold is more than 25% of the combined charge, the taxable selling price shall be deemed to be the cost of the tangible personal property sold. However, where there is a separately stated charge for</u></p>	<p>nontaxable services described in subdivision (d)(1), tax may be reported on a calculated selling price, as defined in subdivision (b)(2) provided the retail selling price also includes the value of rights as provided in subdivision (d)(4). In lieu of using a calculated selling price, commercial artists and designers or advertising agencies may use the method described in (b)(1), that is, it will be rebuttably presumed that 75% of a combined charge is for the nontaxable services.</p>	

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<p>If the commercial artist or designer or advertising agency uses any intermediate production or printing aids in the creation of the finished art, it will be presumed that title to the aids was passed to the client prior to use by the commercial artist or designer or advertising agency. The measure of tax for these aids will be computed in the same manner as provided by Regulation 1541 for special printing aids. Intermediate production or printing aids include, but are not limited to, artwork, illustrations, photography, photo engravings, and other similar materials.</p>	<p><u>services that is nontaxable under subdivision (d)(1), the taxable selling price of the finished art shall be the separately stated charge for that finished art.</u></p> <p><del>If the commercial artist or designer or advertising agency uses any intermediate production or printing aids in the creation of the finished art, it will be presumed that title to the aids was passed to the client prior to use by the commercial artist or designer or advertising agency. The measure of tax for these aids will be computed in the same manner as provided by Regulation 1541 for special printing aids. Intermediate production or printing aids include, but are not limited to, artwork, illustrations, photography, photo engravings, and other similar materials.</del></p> <p><u>If the advertising agency, commercial artist, or designer uses any intermediate production or printing aids in the creation of the finished art, the presumptions with respect to passage of title and the calculation of the measure of tax on the sale of these aids by the advertising agency, commercial artist, or designer, is governed by the provisions of Regulation 1541 applicable to special printing aids.</u></p>		<p>If the commercial artist or designer or advertising agency uses any intermediate production or printing aids in the creation of the finished art, it will be presumed that title to the aids was passed to the client prior to use by the commercial artist or designer or advertising agency. The measure of tax for these aids will be computed in the same manner as provided by Regulation 1541 for special printing aids. Intermediate production or printing aids include, but are not limited to, artwork, illustrations, photography, photo engravings, and other similar materials. <u>The artwork is subject to the lump sum allocation in 1540 (b)(1) if it is equal to or exceeds the purchase price of the artwork. A transfer of electronic or digital pre-press instruction by</u></p>

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<p>(3) SIGNAGE. Tax does not apply to the services to create single copies of blueprints, diagrams, and instructions for signage provided as a result of environmental graphic design. Reproduction charges for additional copies are taxable.</p> <p>(4) REPRODUCTION RIGHTS. Charges for the transfer by a tangible medium of a photograph or of finished art for purposes of reproduction are taxable even though there is no transfer of title to the person reproducing the photograph or work of art. Charges for the right to use the photograph or finished art which has been transferred by tangible medium in the production of tangible personal property are taxable. Charges for a license, copyright, or subpart of a copyright (such as a right to reproduce or to prepare derivative works) to exploit the photograph or finished art are taxable if they are sold along with the photograph or finished art transferred by tangible media or they are sold by a subsequent contract entered into within one year of the original transfer of the photograph or finished art.</p>	<p>(3) SIGNAGE. Tax does not apply to <u>charges for the</u> services to create single copies of blueprints, diagrams, and instructions for signage provided as a result of environmental graphic design. Reproduction charges for additional copies are taxable.</p> <p>(4) REPRODUCTION RIGHTS. <del>Charges for the transfer by a tangible medium of a photograph or of finished art for purposes of reproduction are taxable even though there is no transfer of title to the person reproducing the photograph or work of art. Charges for the right to use the photograph or finished art which has been transferred by tangible medium in the production of tangible personal property are taxable. Charges for a license, copyright, or subpart of a copyright (such as a right to reproduce or to prepare derivative works) to exploit the photograph or finished art are taxable if they are sold along with the photograph or finished art transferred by tangible media or they are sold by a subsequent contract entered into within one year of the original transfer of the photograph or finished art.</del></p>		<p><u>remote telecommunications is not a printing aid.</u></p> <p>(4) REPRODUCTION RIGHTS. Charges for the transfer by a tangible medium of a photograph or of finished art for purposes of reproduction are taxable even though there is no transfer of title to the person reproducing the photograph or work of art. Charges for the right to use the photograph or finished art which has been transferred by tangible medium in the production of tangible personal property are taxable. Charges for a license, copyright, or subpart of a copyright (such as a right to reproduce or to prepare derivative works) to exploit the photograph or finished art</p>

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	<p>Tax does not apply to a sale of an additional license, copyright, or the subpart of a copyright, or to the receipt of royalties received from the exploitation of a copyright, or subpart thereof, if such sale or receipt of royalties occurs more than one year from the date of the original transfer of the physical media containing the photograph or work of art so exploited. Such copyrights or royalties are not considered to have been sold along with finished art transferred by tangible media for the purposes of this subdivision and are deemed sales of nontaxable intangible property.</p> <p>This limitation does not apply to sales or transfers for reproduction by a subsequent owner of the photograph or finished art, such as a stock photo or stock artwork</p>	<p><del>Tax does not apply to a sale of an additional license, copyright, or the subpart of a copyright, or to the receipt of royalties received from the exploitation of a copyright, or subpart thereof, if such sale or receipt of royalties occurs more than one year from the date of the original transfer of the physical media containing the photograph or work of art so exploited. Such copyrights or royalties are not considered to have been sold along with finished art transferred by tangible media for the purposes of this subdivision and are deemed sales of nontaxable intangible property.</del></p> <p><del>This limitation does not apply to sales or transfers for reproduction by a subsequent owner of the photograph or finished art, such as a stock photo or stock artwork</del></p>		<p>are taxable if they are sold along with the photograph or finished art transferred by tangible media or they are sold by a subsequent contract entered into within one year of the original transfer of the photograph or finished art <u>is not taxable as tangible personal property because it is for the intangible copyright value used for a restricted or limited use.</u></p>	

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	<p>house; however, where the stock photo or stock artwork house is merely acting as an agent for the original artist or photographer, the above limitation applies.</p>	<p><del>house; however, where the stock photo or stock artwork house is merely acting as an agent for the original artist or photographer, the above limitation applies.</del></p> <p><u>(A) Charges for the transfer of possession in tangible form to the client or to anyone else on the client's behalf of a photograph or finished art for purposes of reproduction are included in the taxable selling price, including all charges for the right to use that property, even though there is no transfer of title to the person reproducing the photograph or artwork, except as provided in subdivision (d)(4)(B).</u></p> <p><u>(B) A written agreement that assigns or licenses a copyright interest in a photograph or finished art for the purpose of reproducing and selling other property subject to the copyright interest is a technology transfer agreement. Tax applies to amounts received for any tangible personal property transferred as part of a technology transfer agreement. Tax does not apply to amounts received for the assignment of a copyright interest to a third party as part of a technology transfer agreement. The taxable selling price attributable to the sale of a photograph or finished art transferred as</u></p>			

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		<p><u>part of a technology transfer agreement shall be:</u></p> <p><u>1. The separately stated sale price for the photograph or finished art, provided the separately stated price represents a reasonable fair market value of the tangible personal property;</u></p> <p><u>2. Where there is no such separately stated price, the separate price at which the person holding the copyright interest has previously leased that photograph or finished art, or sold or leased like property, to an unrelated third party. However, in light of the unique aspects of each individual photograph or finished art, unless the specific photograph or finished art has been previously leased to an unrelated third party, it is presumed that the holder of the copyright has not previously sold or leased “like property”;</u>  <u>or</u></p> <p><u>3. If there is no such separately stated price under subdivision (d)(4)(B)1., nor a separate price under subdivision (d)(4)(B)2., 200 percent of the combined cost of materials and labor used to produce the photograph or finished art. “Cost of materials” consists of those materials used or otherwise physically incorporated into the photograph or</u></p>			



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	<p>(5) WEBSITES. The design, editing or hosting of an electronic website in which no tangible personal property is transferred to the customer is not subject to tax.</p>	<p><u>finished art, or any tangible personal property transferred as part of the technology transfer agreement. "Labor" includes any charges or value of labor used to create such tangible personal property whether the advertising agency, commercial artist, or designer performs such labor, a third party performs the labor, or the labor is performed through some combination thereof. The value of labor provided by the advertising agency, commercial artist, or designer shall equal the separately stated, reasonable charge for such labor. Where no separately stated charge for labor is made, the value of labor shall equal the lower of the normal and customary charges for labor billed to third parties by the advertising agency, commercial artist, or designer, or the fair market value of the labor performed by the advertising agency, commercial artist, or designer.</u></p> <p>(5) WEBSITES. The design, editing or hosting of an electronic website in which no tangible personal property is transferred to the <del>customer</del> <u>client</u> is not subject to tax.</p>	<p><u>(6) TECHNOLOGY TRANSFER AGREEMENTS. If the transfer of finished artwork</u></p>		

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			<p><u>and intangible personal property (a license, copyright, or subpart of a copyright such as the right to reproduce or to prepare derivative works) is a technology transfer agreement as defined in (c), the amount charged for the intangible property transferred is not subject to tax, if the transfer agreement states a reasonable price for the finished artwork.</u></p> <p><u>If the transfer of finished artwork in a technology transfer agreement is a temporary transfer of possession, the fair rental value of the transfer is deemed to be de minimis and incidental to the transfer of the intangible rights. If the transfer of the finished artwork is a permanent transfer of title to the finished artwork, the taxable amount of the transaction shall be determined as follows:</u></p> <p><u>(A) If the technology transfer agreement does not separately state a price for the finished artwork and the</u></p>		

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			<p><u>finished artwork or like finished artwork has been previously sold or offered for sale, to third parties at a separate price, the price at which the finished artwork was sold or offered to third parties shall be used to establish the retail fair market value of the finished artwork subject to tax. The remaining amount charged under the technology transfer agreement is for the intangible personal property transferred.</u></p> <p><u>(B) If the technology transfer agreement does not separately state a price for the finished artwork or like finished artwork has not been previously sold or offered for sale, to third parties at a separate price, the retail fair market value shall be equal to 200 percent of the cost of materials and labor used to produce the finished artwork subject to tax. The remaining amount charged under the technology transfer agreement is for intangible personal property transferred. In the</u></p>		

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	<p><b>(e) ITEMS PURCHASED BY AN ADVERTISING AGENCY OR BY AN ARTIST OR DESIGNER.</b> An advertising agency, or commercial artist, or designer is the consumer of tangible personal property used in the operation of its business. Tax applies to the sale of such property to the agency, artist, or designer.</p>	<p><b>(e) ITEMS PURCHASED BY AN ADVERTISING AGENCY, OR BY AN <u>COMMERCIAL ARTIST, OR DESIGNER.</u></b> An advertising agency, or commercial artist, or designer is the consumer of tangible personal property used in the operation of its business. Tax applies to the sale of such property to, <u>or to the use of such property by, the advertising agency, commercial artist, or designer.</u></p> <p><b><u>(f) TRANSFERS BY A COMMERCIAL ARTIST OR DESIGNER AT A SOCIAL GATHERING.</u></b> The transfer of original drawings, sketches, illustrations, or paintings by <del>a</del> <u>a commercial artist or designer at a social gathering for entertainment purposes is not a sale or use or purchase of tangible personal property, and the artist or designer is the consumer of any property so transferred, when all the following requirements are satisfied:</u></p>	<p><u>absence of evidence to the contrary, if the finished artwork is in an electronic file, the labor component shall be presumed to be not more than \$100.</u></p>		

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		<p><u>(1) Eighty percent or more of the drawings, sketches, illustrations, or paintings are delivered by the artist or designer to a person or persons other than the purchaser;</u></p> <p><u>(2) Eighty percent or more of all of the drawings, sketches, illustrations, or paintings are received by a person or persons, other than the purchaser, at no cost to the person or persons who become the owner of the drawings, sketches, illustrations, or paintings;</u></p> <p><u>(3) The charge for the drawings, sketches, illustrations, or paintings is based on a preset fee; and</u></p> <p><u>(4) The preset fee charged for the drawings, sketches, illustrations, or paintings is contingent upon a minimum number of at least three drawings, sketches, illustrations, or paintings to be produced by the commercial artist or designer at the social gathering.</u></p> <p><b>(g) CHARGES AND TRANSACTIONS GOVERNED BY OTHER REGULATIONS.</b></p> <p><u>(1) VIDEO OR FILM PRODUCTIONS. If video or film productions obtained or provided by an advertising agency to</u></p>			

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	<p><u>clients are qualified production services, the application of tax is determined by Regulation 1529.</u></p> <p><u>(2) AUDIO PRODUCTIONS. An audio production obtained or provided by an advertising agency to a client falls under the provisions of Regulation 1527. Tax will apply as defined by that regulation.</u></p> <p><u>(3) TYPOGRAPHY. Tax applies to charges for typography or composed type obtained from outside suppliers as provided in Regulation 1541.</u></p>		

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	<p><b>Regulation 1541. PRINTING AND RELATED ARTS.</b></p> <p><b>(a) DEFINITIONS</b></p> <p>(1) SPECIAL PRINTING AID. The term “special printing aid” means a reusable manufacturing aid which is used by a printer during the printing process and is of unique utility to a particular customer. Examples of special printing aids include, but are not limited to, electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, film, single color or multicolor separation negatives, and flats.</p> <p>(2) PRINTING PROCESS. The term “printing process” includes, but is not limited to, letterpress, flexography, gravure, offset lithography, reprography, screen printing, steel-die engraving, thermography, laser, inkjet, and photocopying.</p> <p>(3) REPRODUCTION PROOF. A direct impression of composed type forms containing type matter only or type matter combined with clip art, or a copy of that direct impression made by any method including the diffusion transfer method, and used exclusively for reproduction.</p>	<p><b>Regulation 1541. PRINTING AND RELATED ARTS.</b></p> <p><b>(a) DEFINITIONS</b></p> <p><del>–(1) SPECIAL PRINTING AID. The term “special printing aid” means a reusable manufacturing aid which is used by a printer during the printing process and is of unique utility to a particular customer. Examples of special printing aids include, but are not limited to, electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, artwork, film, single color or multicolor separation negatives, and flats.</del></p> <p><del>–(2) PRINTING PROCESS. The term “printing process” includes, but is not limited to, letterpress, flexography, gravure, offset lithography, reprography, screen printing, steel-die engraving, thermography, laser, inkjet, and photocopying.</del></p> <p><del>–(3) REPRODUCTION PROOF. A direct impression of composed type forms containing type matter only or type matter combined with clip art, or a copy of that direct impression made by any method including the diffusion transfer method, and used exclusively for reproduction.</del></p>	<p><b>Regulation 1541. PRINTING AND RELATED ARTS.</b></p> <p><b>(a) DEFINITIONS</b></p> <p>(1) SPECIAL PRINTING AID. The term “special printing aid” means a reusable manufacturing aid which is used by a printer during the printing process and is of unique utility to a particular customer. Examples of special printing aids include, but are not limited to, electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, <u>clip art</u><del>artwork</del>, film, single color or multicolor separation negatives, and flats.</p>	

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	<p>(4) MECHANICAL OR PASTE-UP. Preparation of copy to make it camera-ready with all type and design elements pasted on artboard or illustration board in exact position and containing instructions, either in the margins or on an overlay, for the platemaker. Also referred to as camera-ready art or camera-ready copy.</p> <p>(5) CLIP ART. Prepackaged art (including photographic images), not produced to the special order of the customer, commercially available on CD Rom, other electronic media or by computer program for use in digital page layout. Images that are enlarged, reduced or rotated are not considered “produced to the special order of the customer.” When distributed in digital form, clip art is often referred to as “click art”.</p>	<p><del>(4) MECHANICAL OR PASTE-UP. Preparation of copy to make it camera-ready with all type and design elements pasted on artboard or illustration board in exact position and containing instructions, either in the margins or on an overlay, for the platemaker. Also referred to as camera-ready art or camera-ready copy.</del></p> <p><del>(5) CLIP ART. Prepackaged art (including photographic images), not produced to the special order of the customer, commercially available on CD Rom, other electronic media or by computer program for use in digital page layout. Images that are enlarged, reduced or rotated are not considered “produced to the special order of the customer.” When distributed in digital form, clip art is often referred to as “click art”.</del></p> <p><u>(1) CLIP ART. Prepackaged art (including photographic images), not produced to the special order of the customer, commercially available on CD Rom, other electronic media or by computer program for use in digital page layout. Images that are enlarged, reduced, or rotated are not considered “produced to the special order of the customer.” When distributed in digital form, clip art is often referred to as “click art.”</u></p> <p><u>(2) COLOR SEPARATOR. A person who engages in the process of color separation and the products of that process. The color separation process divides a full color</u></p>	<p>(5) CLIP ART. Prepackaged art (including photographic images), not produced to the special order of the customer, commercially available on CD Rom, other electronic media or by computer program for use in digital page layout. <del>Images that are enlarged, reduced or rotated are not considered “produced to the special order of the customer.”</del> When distributed in digital form, clip art is often referred to as “click art”.</p>	



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		<p><u>photograph into four separate components, corresponding to the four primary colors used in process color printing. The color separator may accomplish this photographically or electronically, and the products of this process may be either a negative or positive film separation or a separated printing plate.</u></p> <p><u>(3) COLOR SEPARATOR WORKING PRODUCTS. Property such as photographic film for making transparencies, masks, internegatives, interpositives, halftone negatives, composites color separation negatives, goldenrod paper and mylar plastic used in making flats, tape used in stripping negatives into flats, developing chemicals which become a component part of negatives and positives, proofing material and ink used in making final proofs, progressive proofs, and similar items, which are similar in function to special printing aids as defined in subdivision (a)(10).</u></p> <p><u>(4) ELECTRONIC OR DIGITAL PRE-PRESS INSTRUCTION. The creation of original information in digital form by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press, which is then transferred on electronic media such as tape or compact disc.</u></p> <p><u>(5) MECHANICAL OR PASTE-UP. Preparation of copy to make it camera-ready with all type and design elements pasted on artboard or illustration board in exact position and containing instructions, either in the margins or on an overlay, for the platemaker. Also referred to as camera-ready art or camera-ready copy.</u></p>		

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		<p><u>(6) PRINT BROKER. A person who contracts to sell printed matter, but who does not actually engage in the printing process to produce the printed matter to be sold, instead purchasing the printed matter from a printer or from another print broker for resale to the print broker's customer. A person who sells printing for which that person did not engage in the printing process is acting as a print broker even if that person engages in the print process for other contracts.</u></p> <p><u>(7) PRINTER. A person engaged in the printing process.</u></p> <p><u>(8) PRINTING PROCESS. Activities related to the production of printed matter such as letterpress, flexography, gravure, offset lithography, reprography, screen printing, steel-die engraving, thermography, laser printing, inkjet printing, and photocopying.</u></p> <p><u>(9) REPRODUCTION PROOF. A direct impression of composed type forms containing type matter only or type matter combined with clip art, or a copy of that direct impression made by any method including the diffusion transfer method, and used exclusively for reproduction.</u></p> <p><u>(10) SPECIAL PRINTING AIDS. Reusable manufacturing aids which are used by a printer during the printing process and are of unique utility to a particular customer. Special printing aids include electrotypes, stereotypes, photoengravings, silk screens, steel dies, cutting dies, lithographic plates, film, single color, or multicolor separation negatives, and flats.</u></p>		

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	<p><b>(b) APPLICATION OF TAX.</b></p> <p>(1) SALES BY PRINTERS. Tax applies to charges for printing of tangible personal property for consumers, regardless of whether or not the paper and other materials are furnished by the consumer. The measure of tax is the total gross receipts or sales price of the sale with no deduction on account of (a) the cost of the raw materials or other components, (b) labor or service costs of any step in the process of producing, fabricating, processing, printing, or imprinting the tangible personal property, or (c) any other expenses or services that are a part of the sale. Services that are a part of the sale of tangible personal property to consumers include, but are not limited to charges for overtime, set-up, die cutting, embossing, folding (except as provided in subdivision (g) below), and other binding operations. Printers may not deduct from the gross receipts of their sales of printed matter charges related to their typography work or the cost of typography or typesetting to them. Receipts attributable to such costs are includable in the measure of tax.</p>	<p><b>(b) APPLICATION OF TAX.</b> <u>The application of tax is not determined by a person's characterization of itself as an advertising agency, commercial artist or designer, printer, or otherwise, but rather based on what is actually provided to the client. A person may act in multiple capacities, so that the same person may act as an advertising agency for some transactions, as a commercial artist or designer for some transactions, and as a printer for other transactions. When a person acts as an advertising agency or as a commercial artist or designer, Regulation 1540 governs the application of tax; when a person acts as a printer, Regulation 1541 governs the application of tax.</u></p> <p>(1) SALES BY PRINTERS. Tax applies to charges for printing of tangible personal property for consumers, <del>regardless of whether or not the paper and other materials are furnished by the consumer</del> <u>or the printer.</u> The measure of tax is the total gross receipts or sales price of the sale with no deduction on account of (a) the cost of the raw materials or other components, (b) labor or service costs of any step in the process of producing, fabricating, processing, printing, or imprinting the tangible personal property, or (c) any other expenses or services that are a part of the sale. Services that are a part of the sale of tangible personal property to consumers include, <del>but are not limited to</del> charges for overtime, set-up, die cutting, embossing, folding (except as provided in subdivision (g) below), and other binding operations. Printers may not deduct from the gross receipts of their sales of printed matter charges related to their typography work or the cost of typography or typesetting to them, <u>nor can they deduct the costs of special printing aids for which they are consumers under</u></p>	

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	<p>Tax applies to a printer's sale of special printing aids as provided in subdivision (c).</p> <p>(2) PURCHASES BY PRINTERS. Printers are consumers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to the printer and also to any sale subsequent to its use by the printer. Such property includes, but is not limited to, machinery (e.g., printing presses, cameras, electronic pre-press equipment, plate makers), office equipment, and printing aids. Printers, however, may purchase special printing aids for resale as explained in subdivision (c).</p> <p><b>(c) SPECIAL PRINTING AIDS.</b> In General. In recognition of the unique utility that special printing aids have to the sale of printed material, and the need to avoid burdening businesses with unnecessary paperwork, the following presumptions shall apply.</p> <p>(1) With respect to sales of printed material ultimately subject to sales tax, or sales to the U. S. Government, it shall be presumed that the selling price of the printed material includes the selling price of the special printing aids and that title passed to the customer, irrespective of whether or not the printer separately itemizes the special</p>	<p><u>subdivision (c)(1)(A), whether or not a separate charge is made to the customer for the special printing aids.</u>                      Receipts attributable to such costs are includable in the measure of tax.</p> <p>Tax applies to <del>a printer's charges from the</del> sale of special printing aids as provided in subdivision (c).</p> <p>(2) PURCHASES BY PRINTERS. Printers are consumers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to, or to the use of the property by, <del>the a printer</del> and also to any sale subsequent to its use by the printer. <del>Such property includes, but is not limited to,</del> Property ordinarily consumed by a printer includes machinery (e.g., printing presses, cameras, electronic pre-press equipment, plate makers), office equipment, and printing aids. Printers, however, may purchase special printing aids for resale as explained in subdivision (c).</p> <p><del><b>(c) SPECIAL PRINTING AIDS.</b> In General. In recognition of the unique utility that special printing aids have to the sale of printed material, and the need to avoid burdening businesses with unnecessary paperwork, the following presumptions shall apply.</del></p> <p><del>—(1) With respect to sales of printed material ultimately subject to sales tax, or sales to the U. S. Government, it shall be presumed that the selling price of the printed material includes the selling price of the special printing aids and that title passed to the customer, irrespective of whether or not the printer separately itemizes the special</del></p>		

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	<p>printing aids. It shall be further presumed that the printer, or other reseller, discussed in the following paragraph, made no use of the special printing aids prior to their sale. Accordingly the printer may purchase the special printing aids for resale.</p> <p>“Ultimately subject to sales tax,” means either the printer's sale of the printed material and special printing aids is subject to sales tax or is an exempt sale to the U. S. Government, or if the printer’s sale of the printed material is for resale, a subsequent sale of the printed material and special printing aids is subject to California sales tax or is an exempt sale to the U. S. Government.</p> <p>When the printer’s sale of printed material is a sale for resale, as described in the above paragraph, unless the printer timely takes a valid resale certificate in good faith that states the special printing aids are to be purchased for resale, tax is due on the selling price of the special printing aids whether or not the selling price is separately itemized. The selling price of the special printing aids is deemed to be the sales price of the special printing aids, or their components, to the printer regardless of the amount of the separately stated charge, if any, for the special printing aid. The printer need not separately charge sales tax reimbursement to their customer and if the printer has paid sales or use tax on the selling price of the special printing aids or their components to the printer, no additional tax is due.</p> <p>The term “special printing aids” on a resale certificate shall be sufficient to cover all special printing aids as defined in subdivision (a)(1).</p>	<p><del>printing aids. It shall be further presumed that the printer, or other reseller, discussed in the following paragraph, made no use of the special printing aids prior to their sale. Accordingly the printer may purchase the special printing aids for resale.</del></p> <p><del>“Ultimately subject to sales tax,” means either the printer's sale of the printed material and special printing aids is subject to sales tax or is an exempt sale to the U. S. Government, or if the printer’s sale of the printed material is for resale, a subsequent sale of the printed material and special printing aids is subject to California sales tax or is an exempt sale to the U. S. Government.—</del></p> <p><del>When the printer’s sale of printed material is a sale for resale, as described in the above paragraph, unless the printer timely takes a valid resale certificate in good faith that states the special printing aids are to be purchased for resale, tax is due on the selling price of the special printing aids whether or not the selling price is separately itemized. The selling price of the special printing aids is deemed to be the sales price of the special printing aids, or their components, to the printer regardless of the amount of the separately stated charge, if any, for the special printing aid. The printer need not separately charge sales tax reimbursement to their customer and if the printer has paid sales or use tax on the selling price of the special printing aids or their components to the printer, no additional tax is due.</del></p> <p><del>The term “special printing aids” on a resale certificate shall be sufficient to cover all special printing aids as defined in subdivision (a)(1).</del></p>		

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	<p>(2) If a printer does not wish to sell special printing aids in connection with the sale of printed material ultimately subject to sales tax or sold to the U. S. Government, described in (c)(1) above, the following statement should be included on the sales invoice: "The selling price of the printed material does not include the transfer of title to the special printing aids." The printer would then be the owner and consumer of the special printing aids. Tax would apply to both the retail sale of the printed material and the cost to the printer of the special printing aids.</p> <p>(3) With respect to all other sales of printed material, as for example, sales in interstate commerce, sales of exempt newspapers or periodicals, or sales of exempt printed sales messages, it shall also be presumed that the selling price of the printed material includes the selling price of the special printing aids and that title passed to the customer irrespective of whether or not the printer separately itemizes the special printing aids. It shall be further presumed that the printer made no use of the special printing aids prior to their sale. Sales tax is due on the selling price of the special printing aids whether or not the selling price of the special printing aids is separately stated. The selling price of the special printing aids is deemed to be the sales price of the special printing aids, or their components, to the printer regardless of the amount of the separately stated charge, if any, for the special printing aid.</p> <p>The printer need not separately charge sales tax reimbursement to their customer and if the printer has paid sales or use tax on the selling price of the special printing aids or their components to the printer, no additional tax is due.</p>	<p><del>-(2) If a printer does not wish to sell special printing aids in connection with the sale of printed material ultimately subject to sales tax or sold to the U. S. Government, described in (c)(1) above, the following statement should be included on the sales invoice: "The selling price of the printed material does not include the transfer of title to the special printing aids." The printer would then be the owner and consumer of the special printing aids. Tax would apply to both the retail sale of the printed material and the cost to the printer of the special printing aids.</del></p> <p><del>-(3) With respect to all other sales of printed material, as for example, sales in interstate commerce, sales of exempt newspapers or periodicals, or sales of exempt printed sales messages, it shall also be presumed that the selling price of the printed material includes the selling price of the special printing aids and that title passed to the customer irrespective of whether or not the printer separately itemizes the special printing aids. It shall be further presumed that the printer made no use of the special printing aids prior to their sale. Sales tax is due on the selling price of the special printing aids whether or not the selling price of the special printing aids is separately stated. The selling price of the special printing aids is deemed to be the sales price of the special printing aids, or their components, to the printer regardless of the amount of the separately stated charge, if any, for the special printing aid.</del></p> <p><del>The printer need not separately charge sales tax reimbursement to their customer and if the printer has paid sales or use tax on the selling price of the special printing aids or their components to the printer, no additional tax is due.</del></p>		

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	<p>However, sales tax is not due on the selling price of the special printing aids discussed in (c)(3) if the printer timely takes a valid resale certificate in good faith that states the special printing aids are to be purchased for resale. The term “special printing aids” on a resale certificate shall be sufficient to cover all special printing aids as defined in subdivision (a)(1).</p> <p>Persons issuing resale certificates for special printing aids as discussed in (c)(3) are then liable for the tax on their selling price of the special printing aids irrespective of whether or not the printer separately itemized the printing aids to the person issuing the resale certificate and notwithstanding that the printed material is exempt from tax as for example, a sale in interstate commerce, a sale of exempt newspapers or periodicals or a sale of exempt printed sales messages. In no event shall the selling price of the special printing aids be less than the selling price of the special printing aids, or their components, to the printer.</p> <p>If the printer’s sale includes both a sale of printed material ultimately subject to sales tax, as described in (c)(1) above, and a sale of printed material as described in (c)(3) (“split sale”), tax is due on the selling price of the special printing aids. Absent a separate itemization, as long as tax is reported on an amount equal to at least the selling price of the special printing aids or their components to the printer, no further tax will be due on the selling price of the special printing aids.</p> <p>(4) If a printer does not wish to sell special printing aids in connection with all other sales of printed material, as discussed in (c)(3) above, the following statement</p>	<p><del>However, sales tax is not due on the selling price of the special printing aids discussed in (c)(3) if the printer timely takes a valid resale certificate in good faith that states the special printing aids are to be purchased for resale. The term “special printing aids” on a resale certificate shall be sufficient to cover all special printing aids as defined in subdivision (a)(1).</del></p> <p><del>Persons issuing resale certificates for special printing aids as discussed in (c)(3) are then liable for the tax on their selling price of the special printing aids irrespective of whether or not the printer separately itemized the printing aids to the person issuing the resale certificate and notwithstanding that the printed material is exempt from tax as for example, a sale in interstate commerce, a sale of exempt newspapers or periodicals or a sale of exempt printed sales messages. In no event shall the selling price of the special printing aids be less than the selling price of the special printing aids, or their components, to the printer.</del></p> <p><del>If the printer’s sale includes both a sale of printed material ultimately subject to sales tax, as described in (c)(1) above, and a sale of printed material as described in (c)(3) (“split sale”), tax is due on the selling price of the special printing aids. Absent a separate itemization, as long as tax is reported on an amount equal to at least the selling price of the special printing aids or their components to the printer, no further tax will be due on the selling price of the special printing aids.</del></p> <p>(4) If a printer does not wish to sell special printing aids in connection with all other sales of printed material, as discussed in (c)(3) above, the following statement</p>		

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	<p>should be included on the sales invoice: "The selling price of the printed material does not include the transfer of title to the special printing aids." The printer would then be the owner and consumer of the special printing aids. Tax would apply to the cost to the printer of the special printing aids.</p> <p>(5) No other proof shall be required with respect to passage of title on special printing aids.</p>	<p><del>should be included on the sales invoice: "The selling price of the printed material does not include the transfer of title to the special printing aids." The printer would then be the owner and consumer of the special printing aids. Tax would apply to the cost to the printer of the special printing aids.</del></p> <p><del>—(5) No other proof shall be required with respect to passage of title on special printing aids.</del></p> <p><u>(c) SPECIAL PRINTING AIDS. In recognition of the unique utility that special printing aids have to the production of printed matter, the practices of the industry, and the need to avoid burdening businesses with unnecessary paperwork, the presumptions and rules set forth in this subdivision apply to a printer's purchase and sale of special printing aids used to produce printed matter sold by the printer.</u></p> <p><u>(1) PRINTER'S PURCHASE OF SPECIAL PRINTING AIDS.</u></p> <p><u>(A) When a printer who uses special printing aids to produce printed matter does not wish to sell those special printing aids in connection with the printer's sale of the printed matter so produced, the printer shall include the following statement in the contract or the sales invoice: "Special printing aids are not being sold to the customer as part of the sale of the printed matter, and the sales price of the printed matter does not include the transfer of title to the special printing aids." When this statement, or a substantially similar statement, is included in the contract or sales invoice, the printer retains title to the special printing aids and is the consumer thereof, without</u></p>		



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		<p><u>regard to whether the printer separately itemizes a charge for the special printing aids. Accordingly, the printer may not issue a resale certificate to purchase such special printing aids for resale, and tax applies to the cost to the printer of those special printing aids.</u></p> <p><u>(B) In all cases where the printer does not include the statement specified in subdivision (c)(1)(A) in the contract or sales invoice, it shall be irrebuttably presumed that the printer resold special printing aids owned by the printer to the customer, prior to any use, along with the printed matter produced with the special printing aids, without regard to whether the printer separately itemizes a charge for the special printing aids. Accordingly, when the printer does not include a statement in the contract or sales invoice retaining title, the printer may issue a resale certificate when purchasing such special printing aids. If the vendor of the special printing aids to the printer does not take a valid and timely resale certificate from the printer stating that the special printing aids are for resale, the vendor has the burden of showing that the printer actually resold the special printing aids as provided in this subdivision.</u></p> <p><u>(2) PRINTER'S SALE OF SPECIAL PRINTING AIDS. When the printer is regarded as purchasing the special printing aids for resale under subdivision (c)(1)(B), the following rules apply to determine the application of tax to the printer's sale of those special printing aids along with the printed matter produced with the special printing aids.</u></p>		

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		<p><u><b>(A) Retail Sales of Special Printing Aids.</b></u></p> <p><u>1. Sales to the United States Government. When a printer sells special printing aids along with the printed matter produced with those special printing aids to the United States Government, the sale of the special printing aids to the United States Government is exempt from tax as provided in Regulation 1614.</u></p> <p><u>2. With nontaxable sale of printed matter. When a printer makes a retail sale of special printing aids to anyone other than the United States Government along with a nontaxable sale of printed matter (such as an exempt sale in interstate commerce, an exempt sale of qualifying newspapers, periodicals, or printed sales messages, or a nontaxable sale for resale), the printer's sale of the special printing aids is subject to sales tax. The printer's sales price for the special printing aids is deemed to be the sales price of the special printing aids, or their components, to the printer without regard to whether the printer separately states a charge for the special printing aids or, if the printer does so, without regard to the amount of that separately stated charge, and tax is due measured by that sales price. If the printer has paid sales tax reimbursement or use tax on the sales price of the special printing aids or their components to the printer, no additional tax is due.</u></p> <p><u>3. With taxable sale of printed matter. When a printer makes a retail sale of special printing aids along with the taxable retail sale of printed matter, tax applies to the entire charge for the printed matter and special printing aids, without regard to whether the charge for the special printing aid is separately stated. If the printer</u></p>	

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		<p><u>does not make a separate charge for the special printing aids, the charge for the printed matter is deemed to include the taxable charge for the special printing aids, and no further tax is due on account of those special printing aids.</u></p> <p><b><u>(B) Nontaxable Sales of Special Printing Aids for Resale.</u></b> <u>A person purchasing printed matter for resale may also purchase the special printing aids used to produce the printed matter for resale if that person will, in fact, resell the special printing aids prior to any use. A printer will not be regarded as selling special printing aids for resale unless the printer separately states the sales price of the special printing aids in an amount not less than the sales price of the special printing aids, or their components, to the printer and accepts a timely and valid resale certificate in good faith from the printer's customer stating that the special printing aids are purchased for resale. The term "special printing aids" on a resale certificate shall be sufficient to cover all special printing aids as defined in subdivision (a)(104). A printer may sell special printing aids for resale along with printed matter for resale under circumstances where the sale of the printed matter might also qualify for exemption, such as a sale in interstate commerce. However, since a purchaser of special printing aids from a printer would not be regarded as purchasing them for resale unless reselling them as part of the sale of the printed matter produced with those special printing aids, a printer claiming it sold special printing aids for resale should take a resale certificate for the printed matter as well, even if the sale of that printed matter would also qualify for exemption.</u></p>		

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		<p>1. A person is not purchasing special printing aids <u>for resale when title to the special printing aids does not pass to that person's customer(s) prior to any use. If that person's customer(s) cannot exercise dominion and control over the special printing aids, the person did not sell the special printing aids to its customer and cannot purchase the special printing aids for resale. A person does not purchase special printing aids for resale when the printed matter produced with those special printing aids is sold to several purchasers. For example, a person purchasing newspapers for individual sale cannot purchase special printing aids for resale because the individual purchasers of the newspaper are not also purchasing the special printing aids. A person purchasing posters for sale to the general public is not purchasing special printing aids for resale to the general public. A person purchasing printed cartons to pack items for individual sale is not purchasing the special printing aids used to produce the cartons for resale to the ultimate purchasers of the contents of the carton. In addition to the fact that the multiple purchasers in each of these cases could not at any time be regarded as purchasing the special printing aids, the retail purchaser of the end product is not known at the time the special printing aids are used, meaning that the special printing aids could not in any event be resold to those purchasers prior to use.</u></p> <p>2. A person cannot purchase special printing aids for resale when that person does not have an existing contract for the resale of those special printing aids since the printer will use the special printing aids on the purchaser's behalf prior to any resale of the special printing aids by the purchaser.</p>		

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		<p><u>3. A print broker who has an existing contract with a customer for the sale of printed matter who does not include the statement specified in subdivision (c)(1)(A) in the contract or sales invoice to its customer will be irrebuttably presumed to have resold the special printing aids to the customer, prior to any use, along with the printed matter produced with the special printing aids. Accordingly, when the print broker does not include a statement in the contract or sales invoice retaining title, the print broker may purchase such special printing aids for resale and should issue the printer a resale certificate for both the special printing aids and the printed matter.</u></p> <p><u>(C) Split Sales. A printer may use special printing aids to produce printed matter the sale of which is partially exempt and partially subject to tax, such as the sale of printed sales messages some of which are delivered as required by Regulation 1541.5 and some of which are delivered directly to the purchaser. If a printer makes a sale of printed matter where a portion of the sale is taxable and a portion is not taxable along with a retail sale of the special printing aids used to produce that printing, tax is due on the full sales price of the special printing aids. If the printer separately states a charge for the special printing aids in an amount not less than the sales price of the special printing aids or their components to the printer, tax applies to that separate charge. In the absence of such a separate charge, if tax is reported and paid on the portion of the sale of printing which is subject to tax in an amount at least equal to the sales price of the special printing aids or their components to the printer, the charge for the special printing aids is deemed to be included in the taxable charge for the printing, and no further tax is due for the</u></p>		

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		<p><u>printer's sale of the special printing aids. If tax on the sale of the printing is less than this amount, the printer owes tax on the difference.</u></p> <p><u>(3) PURCHASES OF SPECIAL PRINTING AIDS FOR RESALE. A person who issues a resale certificate stating that special printing aids are purchased for resale is liable for tax on that person's sales price of the special printing aids without regard to whether the person's sale of the printed material produced with the special printing aids is not subject to tax (such as an exempt sale in interstate commerce, an exempt sale of qualifying newspapers, periodicals, or printed sales messages, or a nontaxable sale for resale), unless that person sells the special printing aids to the United States Government or takes from his or her purchaser a timely and valid resale certificate in good faith as provided within this subdivision (c). In no event shall the taxable sales price of the special printing aids be less than the sales price of the special printing aids, or their components, to the printer.</u></p> <p><b><u>(A) Print Broker's Retail Sales of Special Printing Aids.</u></b></p> <p><u>1. Sales to the United States Government. When a print broker purchasing special printing aids under a resale certificate sells those special printing aids along with the printed matter produced with those special printing aids to the United States Government, the sale of the special printing aids to the United States Government is exempt from tax as provided in Regulation 1614.</u></p>		

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		<p>2. With nontaxable sale of printed matter. When a print broker purchasing special printing aids under a resale certificate makes a retail sale of special printing aids to anyone other than the United States Government along with a sale of printed matter that is not taxable (such as an exempt sale in interstate commerce, an exempt sale of qualifying newspapers, periodicals, or printed sales messages, or a nontaxable sale for resale), that sale of the special printing aids is subject to sales tax. In no event shall the taxable sales price of the special printing aids be less than the separately stated charge pursuant to subdivision (c)(2)(B).</p> <p><u>3. With taxable sale of printed matter. When a print broker purchasing special printing aids under a resale certificate makes a retail sale of those special printing aids along with the taxable retail sale of printed matter, tax applies to the entire charge for the printed matter and special printing aids, without regard to whether the charge for the special printing aids is separately stated. If the print broker does not make a separate charge for the special printing aids, the charge for the printed matter is deemed to include the taxable charge for the special printing aids, and no further tax is due on account of those special printing aids.</u></p> <p><u><b>(B) Nontaxable Sales of Special Printing Aids for Resale.</b> A print broker purchasing printed matter for resale may also purchase the special printing aids used to produce the printed matter for resale if that print broker will, in fact, resell the special printing aids prior to any use, as provided in subdivision (c)(2)(B).</u></p> <p><u><b>(C) Split Sales.</b> Tax applies to split sales in accordance with subdivision (c)(2)(C).</u></p>	

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	<p><b>(d) COLOR SEPARATORS.</b> The application of tax to printers as explained in subdivisions (b) and (c) also applies to color separators. Color separators are consumers and not retailers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to the color separator. Examples of such property include, but are not limited to, filters and screens, trial proofing materials, disposable lithographic plates, and developing chemicals which do not become incorporated into the article sold.</p> <p>Color separators or printers may purchase property such as photographic film for making transparencies, masks, internegatives, interpositives, halftone negatives, composites color separation negatives, goldenrod paper and mylar plastic used in making flats, scotch tape used in stripping negatives into flats, developing chemicals which become a component part of negatives and positives, proofing material and ink used in making final proofs, progressive proofs, and similar items, which are similar in function to special printing aids as defined in (a)(1), all commonly referred to as “color separator working products” for resale when title to such property passes to the customer prior to use by the color separator or the printer as described in subdivision (c). The term “color separator working products” on a resale certificate shall be sufficient to cover all such products.</p>	<p><b>(d) COLOR SEPARATORS.</b> The application of tax to printers as explained in subdivisions (b) and (c) also applies to color separators. Color separators are consumers and not retailers of tangible personal property which is not sold prior to use or physically incorporated into the article to be sold. Tax applies to the sale of such property to, or to the use of such property by, the color separator. Examples of such property include, but are not limited to, filters and screens, trial proofing materials, disposable lithographic plates, and developing chemicals which do not become incorporated into the article sold. <u>Color separator working products are special printing aids for purposes of this regulation, and the provisions of subdivision (c) apply to their purchase and sale.</u></p> <p><u>Color separators, and persons such as printers when acting as color separators, or printers may purchase property such as photographic film for making transparencies, masks, internegatives, interpositives, halftone negatives, composites color separation negatives, goldenrod paper and mylar plastic used in making flats, scotch tape used in stripping negatives into flats, developing chemicals which become a component part of negatives and positives, proofing material and ink used in making final proofs, progressive proofs, and similar items, which are similar in function to special printing aids as defined in subdivision (a)(8) (a)(1), all commonly referred to as “color separator working products”</u> for resale when title to such property passes to the customer prior to use by the color separator or the printer as described in subdivision (c). The term “color separator working products” <u>or “special printing aids”</u> on a resale certificate shall be sufficient to cover all such products.</p>		



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	<p>Charges for alterations of film work for \$100 or less shall be considered charges for restoring property to its original condition and not subject to tax. Charges greater than \$100 shall be considered charges for fabrication labor and subject to tax.</p> <p><b>(e) COMPOSED TYPE.</b></p> <p>(1) IN GENERAL. Tax does not apply to the fabrication or transfer by a typographer or typesetter of composed type, or reproduction proofs of such composed type to printers to use in the preparation of printed matter. The composition of type is the performance of a service, and tax does not apply to charges for such service, unless that service is a part of the sale of printed matter. Tax applies to the gross receipts from the sale of printed matter without any deduction for the charge for typography. See subdivision (e)(3) below for the application of tax to charges for transfers of composed type combined with artwork.</p> <p>Typographers and typesetters are the consumers and not retailers of materials, such as typesetting machinery, metal forms, galleys, proofing paper, and cleaners which are used in the performance of their service and are consumers of materials transferred to their customers incidental to the performance of nontaxable typography or typesetting services, such as clip art that is combined with text on the same page.</p> <p>Composed type includes type together with lined borders and plain, straight, fancy, or curved lines. Composed type also includes charts, tables, graphs, and similar methods of providing information.</p>	<p>Charges for alterations of film work for \$100 or less shall be considered charges for restoring property to its original condition and not subject to tax. Charges greater than \$100 shall be considered charges for fabrication labor and subject to tax.</p> <p><b>(e) COMPOSED TYPE.</b></p> <p>(1) IN GENERAL. Tax does not apply to the fabrication or transfer by a typographer or typesetter of composed type, or reproduction proofs of such composed type to printers to use in the preparation of printed matter. The composition of type is the performance of a service, and tax does not apply to charges for such service, unless that service is a part of the sale of printed matter. Tax applies to the gross receipts from the sale of printed matter without any deduction for the charge for typography. <u>Tax applies See subdivision (e)(3) below for the application of tax to charges for transfers of composed type combined with artwork as provided in subdivision (e)(3).</u></p> <p>Typographers and typesetters are the consumers and not retailers of materials, such as typesetting machinery, metal forms, galleys, proofing paper, and cleaners which are used in the performance of their service and are consumers of materials transferred to their customers incidental to the performance of nontaxable typography or typesetting services, such as clip art that is combined with text on the same page.</p> <p>Composed type includes type together with lined borders and plain, straight, fancy, or curved lines. Composed type also includes charts, tables, graphs, and similar methods of providing information.</p>	

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	<p>(2) PHOTOCOMPOSITION (INCLUDING PHOTOTYPESETTING AND COMPUTER TYPESETTING). Tax does not apply to the composing of type regardless of whether the type is composed by means of such simplified methods as standard typewriter, desktop publishing, Varsity or Justowriter; by means of photolettering or headlining machines; or by means of a photocomposition (including computer photocomposition) method. Tax does not apply to the transfer, whether temporary or permanent, of the direct product of the type composition service or copy thereof (e.g., typeset matter direct from the typesetting machine ready to be cut and pasted up for reproduction or computer generated type), if that product contains text only or text combined with clip art, whether that product is a paper or film (negative or positive) product, provided the product or copy is to be used exclusively for reproduction.</p> <p>The transfer of camera-ready copy containing text only or text and clip art in the form of a paste-up, mechanical, or assembly, or a camera-ready reproduction of such, is the transfer of composed type and the charge made by the typographer or typesetter to his or her customer is not subject to tax. Tax does not apply to the transfer of a direct photoreproduction of type composed by means of a photolettering or headlining machine or other similar device.</p> <p>Camera-ready copy which is produced through the use of desktop publishing software and a personal computer is nontaxable composed type provided it does not contain artwork other than clip art.</p>	<p>(2) PHOTOCOMPOSITION (INCLUDING PHOTOTYPESETTING AND COMPUTER TYPESETTING). Tax does not apply to the composing of type regardless of whether the type is composed by means of such simplified methods as standard typewriter, desktop publishing, Varsity or Justowriter; by means of photolettering or headlining machines; or by means of a photocomposition (including computer photocomposition) method. Tax does not apply to the transfer, whether temporary or permanent, of the direct product of the type composition service or copy thereof (e.g., typeset matter direct from the typesetting machine ready to be cut and pasted up for reproduction or computer generated type), if that product contains text only or text combined with clip art, whether that product is a paper or film (negative or positive) product, provided the product or copy is to be used exclusively for reproduction.</p> <p>The transfer of camera-ready copy containing text only or text and clip art in the form of a paste-up, mechanical, or assembly, or a camera-ready reproduction of such, is the transfer of composed type and the charge made by the typographer or typesetter to his or her customer is not subject to tax. Tax does not apply to the transfer of a direct photoreproduction of type composed by means of a photolettering or headlining machine or other similar device.</p> <p>Camera-ready copy which is produced through the use of desktop publishing software and a personal computer is nontaxable composed type provided it does not contain artwork other than clip art.</p>	<p>Camera-ready copy which is produced through the use of desktop publishing software and a personal computer is nontaxable composed type <del>provided it does not contain artwork other than clip art.</del></p>	

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	<p>Transfers of plates and mats for use in the printing process which are produced using composed type are subject to tax, and tax applies to the entire charge made to the customer including any portion of the charge attributable to the type composition service, whether that charge is separately stated or not. Transfers of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in letterpress printing are subject to tax. Similarly, transfers of exposed presensitized, wipe-on, deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type and are subject to tax. A transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening process is subject to tax.</p> <p>(3) <b>ARTWORK.</b> Artwork, other than clip art combined with composed type on the same page, is not composed type. The term “artwork” includes, but is not limited to, illustrations (e.g., drawings, diagrams, halftones, or color images), photographs, drawings, paintings, handlettering, and computer generated artwork. If the basis for billing is on a per page basis, any page with artwork is subject to sales tax and any page with only text, or text and clip art is not subject to tax. If the basis for billing is lump sum, the ratio of pages containing artwork to the total number of pages, applied to the lump sum charge, represents the retail selling price of the artwork and is subject to tax, but in no event shall the retail selling price of the artwork be less than the selling price of the artwork, or its components, to the typographer.</p>	<p>Transfers of plates and mats for use in the printing process which are produced using composed type are subject to tax, and tax applies to the entire charge made to the customer including any portion of the charge attributable to the type composition service, whether that charge is separately stated or not. Transfers of engraved printing plates and duplicate plates such as electrotypes, plastic plates, rubber plates, and other plates used in letterpress printing are subject to tax. Similarly, transfers of exposed presensitized, wipe-on, deep-etch, bi-metal and other plates used in offset lithography or of exposed plates produced by a photo-direct method, do not qualify as transfers of reproduction proofs of composed type and are subject to tax. A transfer of gelatin coated film to be transferred to fine mesh silk in the silk-screening process is subject to tax.</p> <p>(3) <b>ARTWORK.</b> Artwork, other than clip art combined with composed type on the same page, is not composed type. The term “artwork” includes, <del>but is not limited to,</del> illustrations (e.g., drawings, diagrams, halftones, or color images), photographs, drawings, paintings, handlettering, and computer generated artwork. If the basis for billing is on a per page basis, <u>the charge for</u> any page with artwork is subject to sales tax and <u>the charge for</u> any page with only text, or text and clip art, is not subject to tax. If the basis for billing is lump sum, the ratio of pages containing artwork to the total number of pages, applied to the lump sum charge, represents the retail <del>selling sales</del> price of the artwork and is subject to tax, but in no event shall the retail <del>selling sales</del> price of the artwork be less than the <del>selling sales</del> price of the artwork, or its components, to the typographer.</p>	<p>(3)  <b>ARTWORK REPRODUCTION RIGHTS.</b> <del>Artwork, other than clip art combined with composed type on the same page, is not composed type. The term “artwork” includes, but is not limited to,</del> illustrations (e.g., drawings, diagrams, halftones, or color images), photographs, drawings, paintings, handlettering, and computer generated artwork. <u>Charges for licenses for the right to reproduce illustrations (e.g., drawings, diagrams, halftones, or color images), photographs,</u></p>

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	<p>However, if the ratio computed above is 10% or less, the true object of the sale shall be deemed to be a sale of typography services and the typographer is the consumer of the artwork. Tax applies to the selling price of the artwork, or its components to the typographer. Tax does not apply to the sale of the typography service as explained in (e)(1).</p>	<p>However, if <del>the ratio computed above is 10% or less</del> <u>ten percent or fewer of the pages contain artwork</u>, the true object of the sale shall be deemed to be a sale of typography services <u>with an incidental transfer of artwork</u>, and the typographer is the consumer of <del>the</del> <u>that</u> artwork. Tax applies to the <del>selling</del> <u>sales</u> price of the artwork, or its components, to the typographer. Tax does not apply to the sale of the typography service as explained in <u>subdivision</u> (e)(1).</p>	<p><u>drawings, paintings, handlettering and computer generated artwork in printed matter are “technology transfer agreements” as defined in Regulation 1540, and subject to sales tax as applied in that Regulation. If the basis for billing is on a per page basis, any page with artwork is subject to sales tax and any page with only text, or text and clip art is not subject to tax. If the basis for billing is lump sum, the ratio of pages containing artwork to the total number of pages, applied to the lump sum charge, represents the retail selling price of the artwork and is subject to tax, but in no event shall the retail selling price of the artwork be less than the selling price of the artwork, or its components, to the typographer.</u></p> <p><del>However, if the ratio computed above is 10% or less, the true object of the sale shall be deemed to be a sale of typography services and the typographer is the consumer of the artwork. Tax applies to the selling price of the artwork, or its components to the</del></p>	

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	<p><b>(f) TRANSFERS OF INFORMATION ON COMPUTER DISK OR OTHER ELECTRONIC MEDIA.</b></p> <p>The transfer by the seller of the original information created by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press is not subject to tax when transferred by computer disk or other electronic storage media and the original information is a custom computer program. Such a process, currently termed “electronic or digital pre-press instruction,” creates a new program which shall be considered a custom computer program as defined under section 6010.9 of the Revenue and Taxation Code and is not subject to tax if the electronic or digital pre-press instruction is prepared to the special order of the customer. The electronic or digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a “canned” or prewritten computer program which is held or existing for general or repeated sale or lease, even if the electronic or digital pre-press instruction was initially developed on a custom basis or for in-house use.</p>	<p><u>(4) REPRODUCTION RIGHTS.</u> Notwithstanding subdivision (e)(3), if the transfer of artwork qualifies as a technology transfer agreement under subdivision (d)(4)(B) of Regulation 1540, tax applies to the transfer of the artwork in accordance with that provision.</p> <p><b><del>(f) TRANSFERS OF INFORMATION ON COMPUTER DISK OR OTHER ELECTRONIC MEDIA <u>ELECTRONIC OR DIGITAL PRE-PRESS INSTRUCTION.</u></del></b></p> <p><del>The transfer by the seller of the original information created by combining more than one computer program into specific instructions or information necessary to prepare and link files for electronic transmission for output to film, plate, or direct to press, is not subject to tax when transferred by computer disk or other electronic storage media and the original information is a custom computer program. Such a process, currently termed “electronic or digital pre-press instruction,” creates a new program which shall be considered</del>Electronic or digital pre-press instruction is a custom computer program as defined under section 6010.9 of the Revenue and Taxation Code the charge for which <del>and</del> is not subject to tax, provided if the electronic or digital pre-press instruction is prepared to the special order of the customer. <del>The e</del>Electronic or digital pre-press instruction shall not, however, be regarded as a custom computer program if it is a “canned” or prewritten computer program which is held or existing for general or repeated sale or lease, even if the electronic or digital</p>	<p><del>typographer. Tax does not apply to the sale of the typography service as explained in (e)(1).</del></p>	

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	<p><b>(g) MAILING.</b> Tax does not apply to charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing or mailing letters or other printed matters, provided such charges are stated separately on invoices and in the accounting records. Tax applies, however, to charges for envelopes.</p> <p><b>(h) SIGNS, SHOWS CARDS, AND POSTERS.</b> Tax applies to retail sales of signs, show cards, and posters, and to charges for painting signs, show cards, and posters whether the materials are furnished by the painter or by the customer.</p> <p>Tax does not apply to charges for painting or lettering on real property. The painter or letterer is the consumer of the materials used in such work, and tax applies with respect to the sale of such property to him.</p>	<p>pre-press instruction was initially developed on a custom basis or for in-house use.</p> <p><b>(g) MAILING.</b> Tax does not apply to charges for postage or for addressing for the purpose of mailing (by hand or by mechanical means), folding for the purpose of mailing, enclosing, sealing, preparing for mailing, or mailing letters or other printed matters, provided such charges are stated separately on invoices and in the accounting records. Tax applies, however, to charges for envelopes.</p> <p><b>(h) SIGNS, SHOW CARDS, AND POSTERS.</b> Tax applies to retail sales of signs, show cards, and posters, and to charges for painting signs, show cards, and posters, whether the materials are furnished by the painter or by the customer.</p> <p>Tax does not apply to charges for painting or lettering on real property. The painter or letterer is the consumer of the materials used in such work, and tax applies with respect to the sale of such property to, <u>or the use of such property by, the painter or letterer-him.</u></p>		

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	<p><b>Regulation 1543. PUBLISHERS.</b></p> <p><b>(a) DEFINITIONS.</b></p> <p>(1) <b>AUTHOR.</b> Author means and includes any person who creates an original manuscript for the purpose of publication. For purposes of this regulation, the following persons are also authors:</p> <p><b>(A) Developmental Editors.</b> A developmental editor means and includes any person who consults with an author (as defined above) to develop the concepts in a manuscript or reviews the copy edited manuscript and recommends visual concepts.</p> <p><b>(B) Copy Editors.</b> A copy editor means and includes any person who reviews a manuscript for grammatical consistency and clarity.</p> <p><b>(C) Manuscript Reviewers.</b> A manuscript reviewer means and includes any person who reviews a manuscript for technical accuracy and acceptability to the proposed audience. For example, a reviewer may review the manuscript of a book on gardening for technical accuracy and suitability of the gardening advice for a particular climate.</p> <p><b>(D) Photo Researchers.</b> A photo researcher means and includes any person who assists other authors or publishers in obtaining permission and rights from third parties to use photographic images to illustrate a manuscript.</p>	<p><b>Regulation 1543. PUBLISHERS.</b></p> <p><b>(a) DEFINITIONS.</b></p> <p><del>—(1) <b>AUTHOR.</b> Author means and includes any person who creates an original manuscript for the purpose of publication. For purposes of this regulation, the following persons are also authors:</del></p> <p><del>—(A) <b>Developmental Editors.</b> A developmental editor means and includes any person who consults with an author (as defined above) to develop the concepts in a manuscript or reviews the copy edited manuscript and recommends visual concepts.</del></p> <p><del>—(B) <b>Copy Editors.</b> A copy editor means and includes any person who reviews a manuscript for grammatical consistency and clarity.</del></p> <p><del>—(C) <b>Manuscript Reviewers.</b> A manuscript reviewer means and includes any person who reviews a manuscript for technical accuracy and acceptability to the proposed audience. For example, a reviewer may review the manuscript of a book on gardening for technical accuracy and suitability of the gardening advice for a particular climate.</del></p> <p><del>—(D) <b>Photo Researchers.</b> A photo researcher means and includes any person who assists other authors or publishers in obtaining permission and rights from third parties to use photographic images to illustrate a manuscript.</del></p>	<p><b>Regulation 1543. PUBLISHERS.</b></p> <p><b>(a) DEFINITIONS.</b></p> <p>(1) <b>AUTHOR.</b> Author means and includes any person who creates an original <u>manuscriptwork</u> for the purpose of publication. For purposes of this regulation, the following persons are also authors:</p>

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	<p><b>(A) Manuscript mark-up:</b> The application of type specifications to a manuscript for typesetting, when done manually.</p> <p><b>(B) Formatting:</b> Manuscript mark-up, when done electronically.</p> <p><b>(C) Typesetting, Typography or Composition:</b> Composition of type by any method, within the meaning of Revenue and Taxation Code section 6010.3.</p> <p><b>(D) Proofreading:</b> A reading of typeset copy for correctness in comparison with the original manuscript.</p> <p><b>(E) Alterations:</b> Changes made to typeset copy or camera-ready copy.</p> <p><b>(F) Dummy:</b> A mock-up or layout of a page showing position and overall form, used for approval. A dummy can be assembled manually or generated by a computer program. A dummy is never incorporated physically into a mechanical or paste-up.</p> <p><b>(G) Mechanical or Paste-Up:</b> Reproduction (“repro”) copy, both text and illustrative material, that is ready to be photographed and made into lithographer’s film. Also referred to as camera-ready art or camera-ready copy.</p> <p><b>(H) Production Coordination or Production Direction:</b> Coordination and scheduling of the various components of a project.</p>	<p><del>—(A) Manuscript mark-up:</del> The application of type specifications to a manuscript for typesetting, when done manually.</p> <p><del>—(B) Formatting:</del> Manuscript mark-up, when done electronically.</p> <p><del>—(C) Typesetting, Typography or Composition:</del> Composition of type by any method, within the meaning of Revenue and Taxation Code section 6010.3.</p> <p><del>—(D) Proofreading:</del> A reading of typeset copy for correctness in comparison with the original manuscript.</p> <p><del>—(E) Alterations:</del> Changes made to typeset copy or camera-ready copy.</p> <p><del>—(F) Dummy:</del> A mock-up or layout of a page showing position and overall form, used for approval. A dummy can be assembled manually or generated by a computer program. A dummy is never incorporated physically into a mechanical or paste-up.</p> <p><del>—(G) Mechanical or Paste-Up:</del> Reproduction (“repro”) copy, both text and illustrative material, that is ready to be photographed and made into lithographer’s film. Also referred to as camera-ready art or camera-ready copy.</p> <p><del>—(H) Production Coordination or Production Direction:</del> Coordination and scheduling of the various components of a project.</p>	

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	<p><b>(I) Production Editing:</b> Maintaining editorial integrity of the author's work during the production process.</p> <p>(5) PUBLISHER. Publisher means and includes any person who owns the rights to reproduce, market and distribute printed literature.</p> <p>(6) PRELIMINARY ART. Preliminary art means roughs, visualizations, layouts and comprehensives, title to which does not pass to the client, but which are prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into or before approval is given for preparation of finished art to be furnished by the seller to his or her client.</p> <p>(7) FINISHED ART. Finished art means the final art used for actual reproduction by photo-mechanical or other processes.</p>	<p><del><b>(I) Production Editing:</b> Maintaining editorial integrity of the author's work during the production process.</del></p> <p><del>-(5) PUBLISHER. Publisher means and includes any person who owns the rights to reproduce, market and distribute printed literature.</del></p> <p><del>-(6) PRELIMINARY ART. Preliminary art means roughs, visualizations, layouts and comprehensives, title to which does not pass to the client, but which are prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into or before approval is given for preparation of finished art to be furnished by the seller to his or her client.</del></p> <p><del>-(7) FINISHED ART. Finished art means the final art used for actual reproduction by photo-mechanical or other processes.</del></p>	<p>(5) PUBLISHER. Publisher means and includes any person who owns <u>or acquires by license</u> the rights to reproduce, market and distribute printed literature.</p> <p>(6) PRELIMINARY ART. Preliminary art means roughs, visualizations, layouts and comprehensives, title to which does not pass to the client, but which are prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into or before approval is given for preparation of finished art to be <u>furnished by the seller to his or her licensed to the</u> client.</p> <p>(7) FINISHED ART. Finished art means the final <u>original art or photographic image used for actual licensed to the client for</u> reproduction by photo-mechanical or other processes. <u>Finished art does not mean any copy of the final original art or photographic image produced for a mechanical or paste-up by scanning, photography,</u></p>

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	<p>(8) PHOTOSTAT. Photostat means a copy produced by photographic means, often used in layout, dummy work, or “for position only” on camera-ready art.</p> <p>(9) SYNDICATORS. The term syndicator means and includes any person who receives original manuscripts or reproduction proofs thereof, including columns, cartoons, and comic strip drawings, from authors and distributes those manuscripts to publishers for publication.</p>	<p><del>(8) PHOTOSTAT. Photostat means a copy produced by photographic means, often used in layout, dummy work, or “for position only” on camera-ready art.</del></p> <p><del>(9) SYNDICATORS. The term syndicator means and includes any person who receives original manuscripts or reproduction proofs thereof, including columns, cartoons, and comic strip drawings, from authors and distributes those manuscripts to publishers for publication.</del></p> <p><u>(1) ART DIRECTOR. Any person who prepares general specifications (in the form of verbal instructions or rough sketches) for an illustrator or photographer.</u></p> <p><u>(2) AUTHOR. Any person who creates an original manuscript, whether written by hand, on a typewriter or computer, or otherwise, for the purpose of publication. For purposes of this regulation, the following persons are also authors:</u></p> <p><u>(A) Copy Editor. Any person who reviews a manuscript for grammatical consistency and clarity.</u></p> <p><u>(B) Developmental Editor. Any person who consults with an author (as defined above) to develop the concepts in a manuscript or reviews the copy edited manuscript and recommends visual concepts.</u></p>	<p><u>photostat, or other means for use in the actual process of reproduction by photo-mechanical or other processes.</u></p>

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		<p><u>(C) Manuscript Reviewer.</u> Any person who reviews a manuscript for technical accuracy and acceptability to the proposed audience. For example, a reviewer may review the manuscript of a book on gardening for technical accuracy and suitability of the gardening advice for a particular climate.</p> <p><u>(D) Photo Researcher.</u> Any person who assists other authors or publishers in obtaining permission and rights from third parties to use photographs for purposes of reproduction in the publication of a manuscript.</p> <p><u>(E) Translator.</u> Any person who produces a manuscript that is a translation of material from a different language.</p> <p><u>(3) DESIGNER.</u> Any person who plans and prepares a general layout of typographical and illustrative elements for printed literature.</p> <p><u>(4) FINISHED ART.</u> Finished art is the final artwork used for actual reproduction by photomechanical or other processes, or used for display. It includes electronic art, illustrations (e.g. drawings, diagrams, halftones, or color images), photographs, sculptures, paintings, and handlettering.</p> <p><u>(5) ILLUSTRATOR.</u> Any person who creates an illustration, which is an original artwork (including cartoons and comic strips) licensed for the purpose of publication.</p>	

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		<p><u>(6) PHOTOGRAPHER. Any person who creates an original photograph through the use of a camera or similar device, which photograph is licensed for the purpose of publication.</u></p> <p><u>(7) PHOTOSTAT. A copy produced by photographic means, often used in layout, dummy work, or “for position only” on camera-ready art.</u></p> <p><u>(8) PRELIMINARY ART. Preliminary art includes is roughs, visualizations, layouts and comprehensives, title to which does not pass to the client, but which property is prepared solely for the purpose of demonstrating an idea or message for acceptance by the client before a contract is entered into or before approval is given for preparation of finished art to be furnished or licensed by the seller to his or her client.</u></p> <p><u>(9) PRODUCTION FUNCTION. A segment of the process of producing camera-ready art or camera-ready copy, and includes the following:</u></p> <p><u>(A) Alterations. Changes made to typeset copy or camera-ready copy.</u></p> <p><u>(B) Dummy. A mock-up or layout of a page showing position and overall form, used for approval. A dummy can be assembled manually or generated by a computer program. A dummy is never incorporated physically into a mechanical or paste-up.</u></p> <p><u>(C) Formatting. A manuscript mark-up, when done electronically.</u></p>		

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		<p><u><b>(D) Manuscript Mark-Up.</b> The application of type specifications to a manuscript for typesetting, when done manually.</u></p> <p><u><b>(E) Mechanical or Paste-Up.</b> A reproduction (“repro”) copy, both text and illustrative material, that is ready to be photographed and made into lithographer’s film. Also referred to as camera-ready art or camera-ready copy.</u></p> <p><u><b>(F) Production Coordination or Production Direction.</b> The coordination and scheduling of the various components of a project.</u></p> <p><u><b>(G) Production Editing.</b> Editing that maintains editorial integrity of the author’s work during the production process.</u></p> <p><u><b>(H) Proofreading.</b> A reading of typeset copy for correctness in comparison with the original manuscript.</u></p> <p><u><b>(I) Typesetting, Typography, or Composition.</b> The composition of type by any method, within the meaning of Revenue and Taxation Code section 6010.3.</u></p> <p><u><b>(10) PUBLISHER.</b> Any person who owns, whether outright or by license, the rights to reproduce, market and distribute printed literature.</u></p> <p><u><b>(11) SYNDICATOR.</b> Any person who receives original manuscripts or reproduction proofs thereof, including columns, cartoons, and comic strip drawings, from authors and distributes those manuscripts to publishers for publication.</u></p>	

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	<p><b>(b) APPLICATION OF TAX.</b></p> <p>(1) AUTHORS.</p> <p>(A) The transfer by an author to a publisher or syndicator, for the purpose of publication, of an original manuscript or copy thereof, including the transfer of an original column, cartoon, or comic strip drawing, is not subject to taxation. Tax does not apply even if the manuscript is transferred in machine-readable form. The transfer of any paper, tape, diskette or other tangible personal property transferred as a means of expressing an idea is not taxable. However, tax applies to the sale of mere copies of an author's work.</p> <p>(B) Tax applies to charges for transfers of photographs and illustrations, whether or not the photographs or illustrations are copyrighted. Transfers of photographs or illustrations illustrating text written by the photographer or illustrator are not taxable when they are merely incidental to the editorial matter.</p> <p>(2) SYNDICATORS. The transfer by a syndicator to a publisher of impressed mats or proofs of syndicated columns, cartoons, or comic strip drawings for the purpose of publication is not subject to tax.</p>	<p><b>(b) APPLICATION OF TAX.</b></p> <p>(1) AUTHORS.</p> <p>(A) The transfer by an author to a publisher or syndicator, for the purpose of publication, of an original manuscript or copy thereof, including the transfer of an original column, cartoon, or comic strip drawing, is <u>a service, the charge for which is not subject to sales tax</u><del>not subject to taxation. Tax does not apply even if the manuscript is transferred in machine-readable form. The transfer of any paper, tape, diskette or other tangible personal property transferred as a means of expressing an idea is not taxable.</del> <u>If the author transfers the original manuscript or copy thereof in tangible form, such as on paper or in machine-readable form such as on tape or compact disc, that transfer is incidental to the author's providing of the service, and the author is the consumer of any such property.</u> However, <del>tax applies to the sale of the transfer of mere copies of an author's work</del> <u>is a sale of tangible personal property, and tax applies accordingly.</u></p> <p>(B) Tax applies to charges for transfers of photographs and illustrations, whether or not the photographs or illustrations are copyrighted. Transfers of photographs or illustrations illustrating text written by the photographer or illustrator are not taxable when they are merely incidental to the editorial matter.</p> <p>(2) SYNDICATORS. The transfer by a syndicator to a publisher of impressed mats or proofs of syndicated columns, cartoons, or comic strip drawings for the purpose of publication is not subject to tax.</p>	

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	<p>(3) DESIGNERS AND ART DIRECTORS. Fees paid to a designer or art director for his or her ability to design, conceive, or dictate ideas, concepts, or specifications are not subject to tax if the designer or art director does not transfer to the client or to any other person on behalf of the client title or possession of any tangible personal property used to convey the ideas. The designer or art director is the consumer of any paper, tape, film, diskette or other tangible personal property used. Tax applies to the sale of such tangible personal property to the designer or art director.</p> <p>(4) PRODUCTION FUNCTIONS.</p> <p>(A) Tax applies to the gross receipts from the retail sale of camera-ready art or camera-ready copy. The measure of tax includes charges for the performance of all production functions, whether the charges are separately stated or not.</p> <p>(B) A contract under which a person performs the following functions only is not subject to tax: Manuscript mark-up, formatting, typesetting, proofreading, production coordination, and production editing. If such functions are separable in the sense that there is no contract for camera-ready copy or camera-ready art until after such functions are completed, charges for such functions are nontaxable.</p>	<p>(3) DESIGNERS AND ART DIRECTORS. Fees paid to a designer or art director for his or her ability to design, conceive, or dictate ideas, concepts, or specifications are not subject to tax if the designer or art director does not transfer to the client or to any other person on behalf of the client title or possession of any tangible personal property used to convey the ideas. The designer or art director is the consumer of any paper, tape, film, diskette, or other tangible personal property used. Tax applies to the sale of such tangible personal property to <u>or use of such tangible personal property by</u> the designer or art director.</p> <p>(4) PRODUCTION FUNCTIONS.</p> <p>(A) Tax applies to the gross receipts from the retail sale of camera-ready art or camera-ready copy. The measure of tax includes charges for the performance of all production functions, whether the charges are separately stated or not.</p> <p>(B) A contract under which a person performs the following functions only is not subject to tax: Manuscript mark-up, formatting, typesetting, proofreading, production coordination, and production editing. <u>If Charges for such functions are taxable when they are provided as part of the taxable sale of camera-ready copy or camera-ready art unless, are separable in the sense that</u> there is no contract for <u>the</u> camera-ready copy or camera-ready art until after such functions are completed, <u>in which case the</u> charges for such functions are nontaxable.</p>	



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	<p>(5) CONTRACT TO PERFORM SERVICES AND TO FURNISH TANGIBLE PERSONAL PROPERTY. One person may, under a single agreement, contract both to perform author, design, or art direction services, and to produce camera-ready copy or art. If, under the terms of the agreement, the client retains the right to approve the manuscript, layout, or general specifications before authorizing preparation of camera-ready copy or art, and if the author, designer, or art director does not transfer to the client title to the layouts or possession of the layouts other than for the purpose of review and approval only, then separately stated charges for performance of the services are not taxable. In the absence of specific contractual language, proof of client approval shall be evidenced by contemporaneous notation of receipt of approval in the records of the author, designer, or art director. No other proof shall be required.</p> <p>(6) ILLUSTRATIONS. Tax does not apply to separate charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art, as, for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction. The charge for preliminary art must be billed separately to the client, either on a separate billing or separately charged for on the billing for the finished art. It must be clearly identified on the billing as roughs, visualizations, layouts, comprehensives or other preliminary art. Proof of ordering or producing the preliminary art, prior to the date of the contract or approval for finished art, shall be evidenced by purchase orders of the buyer, or by work orders or other</p>	<p>(5) CONTRACT TO PERFORM SERVICES AND TO FURNISH TANGIBLE PERSONAL PROPERTY. One person may, under a single agreement, contract both to perform author, design, or art direction services, and to produce camera-ready copy or art. If, under the terms of the agreement, the client retains the right to approve the manuscript, layout, or general specifications before authorizing preparation of camera-ready copy or art, and if the author, designer, or art director does not transfer to the client title to the layouts or possession of the layouts other than for the purpose of review and approval only, then separately stated charges for performance of the services are not taxable. In the absence of specific contractual language, proof of client approval shall be evidenced by contemporaneous notation of receipt of approval in the records of the author, designer, or art director. No other proof shall be required.</p> <p>(6) <del>ILLUSTRATIONS</del><u>PRELIMINARY ART</u>. Tax does not apply to separate charges for preliminary art, except where the preliminary art becomes physically incorporated into the finished art, as, for example, when the finished art is made by inking directly over a pencil sketch or drawing, or the approved layout is used as camera copy for reproduction. The charge for preliminary art must be billed separately to the client, either on a separate billing or separately <del>charged for</del> <u>itemized</u> on the billing for the finished art. It must be clearly identified on the billing as roughs, visualizations, layouts, comprehensives, or other preliminary art. Proof of ordering or producing the preliminary art, prior to the date of the contract or approval for finished art, shall be evidenced by</p>	

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	<p>records of the seller. No other proof shall be required. Tax applies to the total charges made for finished art.</p> <p>(7) SALES BY PUBLISHERS. Sales of printed literature are subject to tax unless the sale is for resale or is specifically exempted by law, e.g., sales of printed sales messages and sales in interstate and foreign commerce.</p> <p>(8) TRANSPORTATION CHARGES. In general, tax applies to charges for the transportation of tangible personal property except under certain conditions. For rules relating to transportation charges, see Regulation 1628, Transportation Charges.</p> <p>Separately stated charges for services related directly to the transportation of printed material to the customer are not subject to the tax, e.g., addressing (by hand or by mechanical means), folding, enclosing, or sealing. Tax applies, however, to charges for envelopes.</p>	<p>purchase orders of the buyer, or by work orders or other records of the seller. No other proof shall be required. Tax applies to the total charges made for finished art. <u>See subdivision (d)(2)(D) of Regulation 1540 for the application of tax when the charge for the finished art includes the charge for nontaxable services described in subdivision (d)(1) of Regulation 1540 and there is no separately stated charge for those services.</u></p> <p>(7) SALES BY PUBLISHERS. Sales of printed literature are subject to tax unless the sale is for resale or is specifically exempted by law, e.g., <u>qualifying</u> sales of printed sales messages and sales in interstate and foreign commerce.</p> <p><u>(8) TRANSPORTATION CHARGES AND SERVICES RELATED TO TRANSPORTATION.</u> <del>In general,</del> <u>Tax applies to charges for the transportation of printed matter in connection with a taxable retail sale except as provided in tangible personal property except under certain conditions. For rules relating to transportation charges, see Regulation 1628, Transportation Charges.</u></p> <p>Separately stated charges for services <u>such as addressing (by hand or by mechanical means), folding, enclosing, or sealing</u> related directly to the transportation of printed <del>material</del> <u>matter</u> to the customer are not subject to the tax, e.g., <del>addressing (by hand or by mechanical means), folding, enclosing, or sealing.</del> Tax applies, however, to charges for envelopes <u>except as otherwise provided in Regulation 1541.5.</u></p>	

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	<p>(9) PURCHASES OF PROPERTY FOR RESALE. Tax applies to the purchase of tangible personal property that is consumed in any production function and does not become a part of the finished product. However, a person may purchase such property for resale if title to the property passes to that person's client prior to its use. Tangible personal property so purchased must be separately listed and priced on the person's sales invoice to the client and sales tax charged when appropriate. Art work is considered to be used if it is photocopied. If artwork is purchased together with a photostat of the artwork and the purchaser uses only the photostat but not the artwork, the artwork may be purchased for resale. Tax applies to the charge made for the photostat.</p> <p><b>(c) EXAMPLES OF THE APPLICATION OF TAX UNDER SPECIFIC CIRCUMSTANCES.</b></p> <p>(1) A firm provides various services to a publisher. In performing a contract with the publisher, the firm buys a color separation from a third party. The firm does not make a copy of the color separation or use it in any way, but resells it to the publisher. The firm may give a resale certificate to the third party but tax applies to the sale to the publisher.</p>	<p>(9) PURCHASES OF PROPERTY FOR RESALE. Tax applies to the purchase of tangible personal property that is consumed in any production function and does not become a part of the finished product. However, a person may purchase such property for resale if <u>that person's contract of sale with its client explicitly passes title to the property</u> <del>passes to that person's client prior to its use. Tangible personal property so purchased must be separately listed and priced on the person's sales invoice to the client and sales tax charged when appropriate and sales tax applies to that charge. Art work is considered to be used if it is photocopied. If artwork is purchased together with a photostat of the artwork and the purchaser uses only the photostat but not the artwork, the artwork may be purchased for resale. Tax applies to the charge made for the photostat.</del></p> <p><u>(10) REPRODUCTION RIGHTS. Notwithstanding anything to the contrary in this regulation, if the transfer of a photograph or artwork is made pursuant to a technology transfer agreement under subdivision (d)(4)(B) of Regulation 1540, tax applies to the transfer of the artwork in accordance with that provision.</u></p> <p><b>(c) EXAMPLES OF THE APPLICATION OF TAX UNDER SPECIFIC CIRCUMSTANCES.</b></p> <p>(1) A firm provides various services to a publisher. In performing a contract with the publisher, the firm buys a color separation from a third party. The firm does not make a copy of the color separation or use it in any way, but resells it to the publisher. The firm may give a resale certificate to the third party but tax applies to the sale to the publisher.</p>	

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	<p>(2) The firm in Example (1) uses the color separation before reselling it to the publisher. Both the firm and the publisher are consumers, and both sales are subject to tax.</p> <p>(3) The firm in Example (1) buys both the color separation and a photostatic copy ("stat") of it from the third party who separately states the price of each item on his invoice. The firm retains the stat but resells the color separation to the publisher without using it in any way.</p> <p>The firm may give a resale certificate to the third party for the color separation, but tax applies to the third party's sale of the stat. Tax also applies to the firm's sale of the color separation to the publisher.</p> <p>(4) A firm contracts with a publisher to perform a contract in three stages, as follows:</p> <p>(A) The firm creates an original manuscript of a book. The publisher reviews the first draft, comments on it, and approves it. The firm then does developmental editing, in which the writer and editors develop the manuscript for sound editorial structure and organization. The publisher reviews the resulting second draft, comments on it, and approves it. The firm then does copy editing, in which editors review the manuscript for grammatical consistency and clarity. After this, the firm passes title to the manuscript to the publisher for the purpose of publication. Under the contract, the firm can proceed with further work only with the publisher's approval.</p>	<p>(2) The firm in Example (1) uses the color separation before reselling it to the publisher. Both the firm and the publisher are consumers, and both sales are subject to tax.</p> <p>(3) The firm in Example (1) buys both the color separation and a photostatic copy ("stat") of it from the third party who separately states the price of each item on his invoice. The firm retains the stat but resells the color separation to the publisher without using it in any way. <u>Since the third party used the color separation to make a copy of it, the sale of the component parts to the third party, or the third party's use of those component parts, is subject to tax.</u> The firm may give a resale certificate to the third party for the color separation, but tax applies to the third party's sale of the stat. Tax also applies to the firm's sale of the color separation to the publisher.</p> <p>(4) A firm contracts with a publisher to perform a contract in three stages, as follows:</p> <p>(A) The firm creates an original manuscript of a book. The publisher reviews the first draft, comments on it, and approves it. The firm then does developmental editing, in which the writer and editors develop the manuscript for sound editorial structure and organization. The publisher reviews the resulting second draft, comments on it, and approves it. The firm then does copy editing, in which editors review the manuscript for grammatical consistency and clarity. After this, the firm passes title to the manuscript to the publisher for the purpose of publication. Under the contract, the firm can proceed with further work only with the publisher's approval.</p>	

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	<p>Tax does not apply to the sale of the finished manuscript or to any of the steps of writing and editing it.</p> <p><b>(B)</b> In the second stage, the publisher returns the accepted manuscript to the firm for typesetting into galleys, which the publisher reviews and approves. The firm then arranges the galleys into page form, which the publisher reviews and approves. The firm then produces camera-ready art, which the publisher reviews for approval or alterations. The publisher then accepts and takes title to the camera-ready art.</p> <p>Tax applies to the firm's gross receipts from the sale of the camera-ready art, including formatting, typesetting, proofreading, and production coordination, whether separately stated or not. To preserve the exempt status of the receipts described in Example (4)(A), above, the receipts in Example (4)(A) should be separately stated from the receipts in this Example (4)(B).</p> <p><b>(C)</b> In the third stage, the publisher returns the camera-ready art to the firm for printing. The firm subcontracts the printing to a printer. The firm manages the quality of the printing. A representative of the publisher visits the printer to approve the work. At the firm's instruction, the printer ships the completed books to the publisher's warehouse.</p> <p>The publisher may furnish a resale certificate to the firm, who may in turn furnish a resale certificate to the printer (provided the firm does not use the completed</p>	<p>Tax does not apply to the sale of the finished manuscript or to any of the steps of writing and editing it.</p> <p><b>(B)</b> In the second stage, the publisher returns the accepted manuscript to the firm for typesetting into galleys, which the publisher reviews and approves. The firm then arranges the galleys into page form, which the publisher reviews and approves. The firm then produces camera-ready art, which the publisher reviews for approval or alterations. The publisher then accepts and takes title to the camera-ready art.</p> <p>Tax applies to the firm's gross receipts from the sale of the camera-ready art, including formatting, typesetting, proofreading, and production coordination, whether separately stated or not. To preserve the <del>exempt</del> <u>nontaxable</u> status of the receipts described in Example (4)(A), above, the <del>receipts</del> <u>charges for work done in</u> Example (4)(A) should be separately stated from the <del>receipts</del> <u>charges for the sale of the tangible personal property</u> in this Example (4)(B).</p> <p><b>(C)</b> In the third stage, the publisher returns the camera-ready art to the firm for printing. The firm subcontracts the printing to a printer. The firm manages the quality of the printing. A representative of the publisher visits the printer to approve the work. At the firm's instruction, the printer ships the completed books to the publisher's warehouse.</p> <p><del>The</del> <u>Since the firm will be reselling the books to the publisher without using them, the firm may issue a resale certificate to the printer. Since the publisher</u></p>	

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	<p>books in any way). Tax applies to sales by the publisher to consumers.</p> <p>(5) A publisher owns an existing manuscript. The publisher contracts with an editorial design firm for developmental editing, copy editing, and design specifications. The firm reviews the manuscript and makes recommendations to the publisher for developing it into publishable form, including recommended layout and a general approach to design (e.g., trim size). After the publisher accepts these recommendations, a designer (at the firm or a subcontractor) prepares sample sketches and dummies to express the idea to the publisher. After the publisher approves the sketches and dummies, the designer creates type specifications. A developmental editor and a copy editor (at the firm or a subcontractor) perform development and copy editing services. The edited manuscript, dummies, and type specifications are transferred to the publisher.</p> <p>Tax does not apply to the editing services because they are author's services. Tax does not apply to the dummies and type specifications if the charges for the dummies and type specifications are separately stated and if possession and title is retained by the editorial design firm.</p>	<p><del>intends to resell the books, the publisher may furnish issue a resale certificate to the firm, who may in turn furnish a resale certificate to the printer (provided the firm does not use the completed books in any way).</del>                      Tax applies to sales <u>of the books</u> by the publisher to consumers <u>unless the sales are specifically exempt by statute (e.g., sales in interstate commerce).</u></p> <p>(5) A publisher owns an existing manuscript. The publisher contracts with an editorial design firm for developmental editing, copy editing, and design specifications. The firm reviews the manuscript and makes recommendations to the publisher for developing it into publishable form, including recommended layout and a general approach to design (e.g., trim size). After the publisher accepts these recommendations, a designer (at the firm or a subcontractor) prepares sample sketches and dummies to express the idea to the publisher. After the publisher approves the sketches and dummies, the designer creates type specifications. A developmental editor and a copy editor (at the firm or a subcontractor) perform development and copy editing services. The edited manuscript, dummies, and type specifications are transferred to the publisher.</p> <p>Tax does not apply to the editing services because they are author's services. Tax does not apply to <u>charges for the dummies and type specifications</u> if <del>the charges for the dummies and type specifications</del> <u>those charges</u> are separately stated and if possession and title is retained by the editorial design firm.</p>	

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	<p>(6) A publisher has an office in California and an office in New York. The publisher's California office purchases camera-ready art from a California production firm with title passing in California. However, the production firm, on instructions from the publisher, ships the camera-ready art directly to the publisher's New York office.</p> <p>Tax does not apply to the production firm's gross receipts from the sale of the camera-ready art, because the sale is in interstate commerce.</p>	<p>(6) A publisher has an office in California and an office in New York. The publisher's California office purchases camera-ready art from a California production firm with title passing in California. However, the production firm, on instructions from the publisher, ships the camera-ready art directly to the publisher's New York office <u>for use at the New York office, with no use of the camera-ready art in California.</u></p> <p>Tax does not apply to the production firm's gross receipts from the sale of the camera-ready art, because the sale is in interstate commerce.</p> <p><u>(7) An illustrator makes a temporary transfer of an illustration that qualifies as a technology transfer agreement under subdivision (d)(4)(B) of Regulation 1540. The illustrations are transferred to a publisher for purposes of reproducing the illustration in a children's book. The publisher makes a computer scan of the illustration and returns the original illustration to the illustrator. The publisher incorporates the computer scans into layouts which are used to reproduce the illustration in the printed children's books, which are then sold. The illustrator is paid an advance against royalties, and is then paid royalties based on retail sales of the children's book. The illustrator does not make a separate charge for the tangible personal property leased to the publisher in accordance with subdivision (d)(4)(B)1. of Regulation 1540. Tax therefore applies to the illustrator's transfer as specified in subdivision (d)(4)(B)3. of Regulation 1540. Tax applies to the retail sales of the children's book unless for resale or specifically exempt by statute.</u></p>	<p><u>(7) An illustrator licenses her finished art images to a publisher to be reproduced as illustrations in a children's book. The transaction is therefore a "technology transfer agreement." The finished art images are temporarily transferred to the publisher, scanned, and returned to the illustrator. The computer scans are incorporated into layouts by the publisher and printed in copies offered for retail sale. The illustrator is initially paid an advance against the royalties, and paid royalties thereafter on subsequent retail sales of the book. Tax does not apply to the illustrator's charges to the publisher, paid in the form of an advance on royalties, for licensing</u></p>

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			<p><u>of the images to the publisher, nor does tax apply to any royalties paid subsequently. Tax does apply to retail sales of the book.</u></p> <p><u>(8) A photographer grants (licenses) one-time usage of photographic images for reproduction in a magazine. The transaction is therefore a “technology transfer agreement.” The photographic prints are finished art, temporarily transferred to the magazine, which creates preliminary art layouts for production and printing. Tax does not apply to the photographer’s charges for licensing usage by the magazine. Tax does apply to retail sale of copies of the magazine.</u></p> <p><u>(9) A designer contracts with a client to produce a brochure. The transaction is a “technology transfer agreement.”</u></p> <p><u>(A) The designer provides design and art direction services, producing a preliminary art layout containing copy provided by the client, and images which the designer licenses from various sources and sub-licenses to the client. The preliminary art layout is</u></p>



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			<p><u>formatted on a diskette which is delivered to the client's printer, which returns the diskette to the designer after making the necessary printing plates. Tax does not apply to the design and art direction services, nor to the production of the preliminary art.</u></p> <p><u>(B) The same situation as above, but the designer delivers the diskette to the designer's printer, purchases the printed matter from the printer and resells it to the client. Tax does not apply to the design and art direction services, nor to the production of the preliminary art layout delivered to the printer by the designer. Tax does apply to the charges for the printed matter produced by the printer and delivered by the designer to the client. Tax also applies to the charges by the printer for plates, color separations, and similar printing aids.</u></p>